***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

# 76-1001

# United States Court of Appeals

**FOR THE SECOND CIRCUIT**

**Docket No. 76-1**

UNITED STATES OF AMERICA,

*Appellee,*

—vs.—

VICTOR LEONG, ERNST OLSEN and
WONG CHOU SHEK,

*Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

## APPENDIX IN BEHALF OF APPELLANTS LEONG AND WONG


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UNITED STATES COURT OF APPEALS
FILED
MAR 19 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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A 1

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE-MAIN

75 CRIM. 2

B. & Form No. 30 Rev.

| ATTORNEYS |
|---|
| For U.S.: |
| Eugene F. Bannigan 791-0875 |
| For Defendant: |

1. BING KIN LOW, 4
2. LI CHI YING, a/k/a "Robert Li", 4
3. WONG SHUE TREN, a/k/a "Tony Wong", 1,
4. JOHNNY CHAU, 4
5. PAUL JANG, a/k/a "Communist Pui", 4
6. VICTOR LEONG, a/k/a "Poon Choy Leong", 4
7. ERNST OLSEN, 4 2, 11, 14
8. CONNY ANDRE GUSTAFSSON, 1, 9
9. STEINER FURU, 1, 9
10. ERIK MAX HANSEN, 1, 13
11. JOHN CHRISTIANSEN, 1
12. ARNE ANDERSEN, 1
13. BERNARD DALAL, 1
14. LEE LOUIE, 1, 3, 4, 5
15. BILL FERN, 1
16. WONG CHOU SHEK, a/k/a "Ah Wong", 1
17. PON YOU WING, a/k/a "Ah Fu", 1, 10
18. GEORGE KAY LEW, a/k/a "Ah Kay", 1
19. CHAN CHEUNG, 1, 15, 16
(07) 20. ENG FONG, 1, 8
21. LAM SHING 1, 7
18.2 22. WES SIK MOY, a/k/a "Ah Siah", 1, 12
23. PHILIP CHOY TONG, 1
18.2 24. ROLAND CHU and 1
25. LOUIE YIU CHE, a/k/a "Peter Louie", a/k/a "Louie Yin", 1

| Title | 21 |
|---|---|
| 1973 - 11,12,25 | |
| Sec. 846, 812, 841, (a)(1), (b). | |
| Consp. to viol. Fed. Narcotic Laws. (Ct. 1). Distr. & possess. w/intent to distr. Heroin, I. (cts. 2-16) (16 Counts.) | |

| DATE | PROCEEDINGS |
|---|---|
| 3-5-75 | Filed indictment. Assigned to Ward, J. as related case. |
| 3-5-75 | B/W ordered on deft. Philip Choy Tung.....Ward, J. |
| 3-7-75 | Trial set for 4-14-75.....Ward, J. |
| 3-17-75 | Defts. Bing Kin Low, Li Chi Ying, Wong Shue Tren, Johnny Chau, Victor Leong are fugitives of the jurisdiction [illegible] of a foreign country (Canada). |
| 3-17-75 | Defts. Conny Andre Gustafsson, Steiner Furu, [illegible] Arne Andersen are fugitives of the [illegible] country of Norway. |
| 3-17-75 | Defts. Wong Chou Shek a/k/a Ah Wong, [illegible] a/k/a Ah Siah, Philip Choy Tong are [illegible] |
| 3-17-75 | Deft. Ernest Olsen, present [illegible] plea of not guilty. 10 [illegible] for motions. Deft. [illegible] tion of bail..... |

-over-

A 2

| Date | Proceedings |
|---|---|
| 3-17-75 | Deft. Bernard Bulan present (atty not present) Court enters a plea of not guilty. Court fixed bail at $25,000 continued. Remanded in lieu of bail. |
| | Deft. Lee Lewis present, (atty. Maurice Kogin present) Deft. enters a plea of not guilty. Court fixed bail at $40,000 - $20,000 each or surety continued. |
| | Deft. Bill Yorn present (atty present). Deft. enters a plea of not guilty. Bail continued. |
| | Deft. Pon Yon Wing present (atty David Blackstone present). Deft. enters a plea of not guilty. Court fixed bail at $7,500 each to be continued. Deft. [illegible] in lieu of bail. |
| | Deft. Bun Fong present (atty. Paul Burt present) Deft. enters a plea of [illegible] Court fixed bail at $1,000 P.R.B. secured by Passbook. |
| | Deft. Lee Shing not present (atty. Robert Mitchell present). Court enters [illegible] of not guilty. No bail detainer lodged. |
| | Deft. Roland Chu present (atty. not present) Court enters a plea of not guilty. Court fixed bail at $10,000 P.R.B. secured by 10% cash. |
| | Deft. Louie Yin Shu present (no atty. present) Court enters plea of not guilty. .....Pollack,J. |
| 3-19-75 | KWE FONG-Filed notice of appearance of Paul Burt as attorney for defe. |
| 3-19-75 | LAM SHING-Filed notice of appearance of Robert Mitchell as Attorney for |
| 3-18-75 | PON YON WING-Filed notice of appearance of David Blackstone as attorney |
| 3-18-75 | HERBERT GLAUB-Filed notice of appearance of Irving Katchen as attorney for |
| 3-24-75 | Deft. Pon Yon Wing-Application to reduce bail to $7,500.00 P.R.B. secured limits extended to Continental United States. Deft. Remanded. |
| 3-24-75 | PON YON WING-Issued remand. |
| 3-24-75 | Defts. Wan Sik Hoy, Hung Chow Shak, George Kay Lee & [illegible] to 3-31-75.....Bricant,J. |
| 3-25-75 | Filed Govt'e. bill of particulars. |
| 3-25-75 | Filed Govt'e. affidavit & notice of motion for an [illegible] this matter, ret. 4-1-75. |
| 3-26-75 | PON YON WING-Filed unsecured P.R.B. in the sum of $7,500.00 [illegible] |
| 3-27-75 | Deft. Shak with atty. present pleads not guilty. Bail [illegible] secured by $7,500 each. (also in 74 Cr. 887 & 75 [illegible] |
| 3-27-75 | Deft. Yuen with atty. present pleads not guilty. Bail of [illegible] $1,000 each continued. Trial to begin 7-14-75 at 10:00 A.M. for all defts.....Bricant,J. |
| 3-28-75 | HUNG CHOW SHAK-Filed appearance bond in the sum of $150,000 [illegible] cash, receipt #44302 - acknowledged by the Clerk. [illegible] |
| 4-2-75 | Filed MEMO ENDORSED on Deft's. motion filed 3-25-75. Parties [illegible] exercises its discretion to adjourn the date of trial to [illegible] 10:00 A.M. for the reasons set forth in the Govt's [illegible] |

BEST COPY AVAILABLE

A 3

D. C. 110 Rev. Civil Docket Continuation

| DATE | PROCEEDINGS |
|---|---|
| 4-3-75 | POK YOK WING-Filed Remand - 3-24-75 Deft. released from the custody of the U.S. Marshal. Bond posted as directed by the Court. |
| 4-10-75 | Deft. Dalan with attorney present for reduction of bail now fixed by Magistrate at $25,000 cash or surety. Application adjourned, sine die.....Ward,J. |
| 4-17-75 | PHILIP CHOY TONG - Filed Warrant of Arrest with Marshals return unexecuted. Vacated 3/27/75. |
| 4-30-75 | Deft. Dalan with atty.present. Bail reduced to $10,000 P.R. B. secured by $1,000 cash or surety. Bail limits extended to E.D.N.Y. Ward J. |
| 5-14-75 | BERNARD DALAN-Filed deft's. appearance bond in the sum of $10,000 P.R.B. secured by $1,000 cash. Receipt #51602 - acknowledged by the Clerk. |
| 5-27-75 | BERNARD DALAN-Filed Remand - Deft. is released from the custody of the U.S. upon posting $10,000 bond secured by $1,000 cash on 5-14-75. |
| 5-28-75 | BERNARD DALAN-Filed deft's. demand for a bill of particulars and motion for discovery and inspection. |
| 6-12-75 | Deft. Leong appeared. Court directs entry of a not guilty plea. Bail fixed $100,000 cash or surety by Magistrate continued. Deft. permitted to call Canadian attorney.....Ward, J. |
| 6-27-75 | Filed Govt's. affidavit for a writ of habeas corpus ad test., for [illegible] Thomas directed to Warden, Federal Correction Institution, Otisville, N.Y. Writ issued, ret. 7-3-75. |
| 7-3-75 | BERNARD DALAN- Filed Memo End. on Demand for Bill of Particulars [illegible] Motion denied except as consented to by the Government.... Ward, J. |
| 7-10-75 | ERNEST OSEN Filed Affidavit & Notice of motion [illegible] an order dismissing the within indictment on the ground of [illegible] well as collateral estoppel. Argue before Ward, J. |
| 7-10-75 | Deft. Pon You Wing (atty present) Plead guilty to ct. [illegible] M. Fong also present) P.S.I. ordered. Sentence date 8-7-75 at [illegible] |
| 7-10-75 | Deft. Lee Louie (atty present) withdraws plea of not guilty & pleads [illegible] P.S.I. ordered . Sentence date 8-7-75 at 9:30 A.M. Writ remanded. |
| 7-10-75 | Re deft. Olsen Deft. moves to dismiss ind. Dec. deferred.....Ward, J. |
| 7-14-75 | Governments application to sever as to Chu, Tong, Mey, Ching, Fong, [illegible] bail -granted. Trial adjourned to Sept. 22 , 1975 at 10 A.M. (Govt'[illegible] |
| 7-14-75 | Deft. Leong (atty present) moves to reduce bail, granted. Bail [illegible] cash or surety....Ward, J |
| 7-10-75 | LAM SHING-Filed Govt's. affidavit for a writ of habeas corpus directed to [illegible] Green Haven State Prison. Writ issued, ret. 7-14-75. |
| 7-23-75 | VICTOR LEONG-Filed CJA Form 23 - deft's. financial affidavit. |

| DATE | PROCEEDINGS | Date Order or Judgment |
|---|---|---|
| 7-23-75 | LAM SHING-Filed CJA Form 20 Copy 3 appointing Robert Mitchell as attorney for deft., dated 8-22-75.....Ward,J. | |
| 7-23-75 | LAM SHING-Filed CJA Form 20 Copy 2 approving payment to Robert Mitchell, dated 7-14-75.....Ward,J. | |
| 7-18-75 | Filed transcript of record of proceedings dated 6-5-75. | |
| 8-13-75 | WONG CHOU SHEK-Filed deft's. affidavit & motion to proceed in forma pauperis. | |
| 8-15-75 | WONG CHOU SHEK-Filed MEMO ENDORSED on deft's. motion filed 8-13-75. Motion granted. No opposition. Order signed.....Ward,J. (mailed notice) | |
| 8-15-75 | WONG CHOU SHEK-Filed ORDER that the deft. is permitted to proceed in forma pauperis pursuant to the provisions of the Criminal Justice Act including therein payment of counsel fees.....Ward,J. (mailed notice) | |
| 8-1-75 | Deft. Leong with attorney present moves to reduce bail - denied..... | |
| 8-19-75 | Deft. Victor Leong, A.U.S.A. Flannery & David Keenan, Esq? present. Bail application Granted and reduced to $20,000.00 cash or surety. Bail to be present. Waiver of Extradition to be signed. Deft. to furnish bail for apartment 26 at 26 Vandam St. Deft. to report to U.S. Marshal Mon. & Friday. Bail limited to Southern District of N.Y. Deft. to appear on 9-22-75 at 10 A.M. in Room 906.....Ward,J. | |
| 8-20-75 | VICTOR LWONG-Issued remand. | |
| 8-20-75 | Filed Govt's. affidavit & notice of motion for an Order authorizing the to take the deposition of Lam Kin Sang, rat. 8-26-75. | |
| 8-20-75 | Filed Govt's. memorandum of law in support of its motion for deposition | |
| 8-3-75 | Filed ORDER that Govt's. application to take the deposition of [illegible] granted. Defts'. attorneys shall have the right to attend the and to cross-examine. Travel expenses will be paid by [illegible] taking of deposition shall be given by telephone and [illegible] be mailed forthwith by the U.S. Attorney to the defts' | |
| 8-27-75 | ERNEST OLSEN-Filed deft's. affidavit in opposition to Govt's. [illegible] taking of the deposition of Lam K'in Sang. | |
| 8-20-75 | VICTOR LEONG-Filed deft's appearance bond in the sum of $20,000 [illegible] #56515 -Lin Yip Seling Leong - ackpowledged by the Clerk. | |
| 8-27-75 | Filed MEMO ENDORSED on Govt's. motion to take the deposition of [illegible] Motion granted. Submit Order.....Ward,J. | |
| 9-3-75 | ERNST OLSEN-Filed Govt's. affidavit for a writ of habeas corpus [illegible] Warder, Medical Center for Federal Prisoners, Prison Road, Springfield, Mo. Writ Issued, rat. 9-8-75. | |
| 9-8-75 | Filed copy of order filed 9-3-75 with affidavit of service by John Fl[illegible] | |

Cont'd. On Page #5

| DATE | PROCEEDINGS |
|---|---|
| 8-27-75 | Filed copy of letter addressed to Alan R. Kaufman, A.U.S.A. from Singer & Bernard Hudt, dated 8-22-75. |
| 9-11-75 | Hearing held. Judge grants an adjournment until 9-12-75 for the continuation of pre-trial testimony.....Levet,J. |
| 9-16-75 | Filed Remand-Deft. Leong released from custody of U.S. Marshal upon posting $20,000 cash bond. |
| 9-22-75 | VICTOR LEONG-Filed deft's. affidavit & notice of motion for permission to take deposition of Paul Jang in Vancouver, British Columbia on 9-18-75. |
| 9-22-75 | VICTOR LEONG-Filed deft's. memorandum of law in support of motion to take deposition of a witness. |
| 9-22-75 | VICTOR LEONG-Filed affidavit & ORDER that U.S. Marshal shall serve the subpoenas upon persons named without prepayment of fees and the U.S. Marshal shall pay the witness fees and mileage pursuant to C.J.A.....Ward,J. |
| 9-23-75 | LOUIE YUI-CHE-Filed deft's. affidavit & Order to Show Cause for suppression of potential testimony, ret. before commencement of trial scheduled for 9-23-75.....Ward,J. |
| | [redacted] YUI-CHE-Filed MEMO ENDORSED on deft's. Order to Show Cause filed 9-23-75. Motion disposed of in accordance with oral decision rendered this date. .....Ward,J. (mailed notice) |
| 9-23-75 | Before Ward,J. Jury trial begun as to defts. Leong, Olsen, Wong & Louie. Bail to deft. Louie revoked and deft. remanded. |
| 9-24-75 | Trial continued. |
| 9-25-75 | VICTOR LEONG-Filed MEMO ENDORSED on deft's. motion for permission [redacted] Motion denied without prejudice.....Ward,J. (mailed notice) |
| 9-25-75 | Trial continues. |
| 9-26-75 | Trial continues. Deft. Louie's bail of $10,000 P.R.B. is [redacted] continued. Deft. Leong's bail limits to include E.D. of N.Y. |
| 9-26-75 | YIU CHE LOUIE-Filed deft's. unsecured P.R.B. in the sum of $10,000 [redacted] by the Clerk. |
| 9-29-75 | Trial continues. |
| 9-30-75 | Trial continues. |
| 10-1-75 | Trial continues. Deft. Leong's bail reduced from $20,000 to $10,000 [redacted] to be remitted to atty. Keenan to be disbursed by him. |
| 10-1-75 | VICTOR LEONG-Filed CJA Form 21 Copy 3 appointing Stephen Chang as interpreter dated 9-25-75.....Ward,J. |
| 10-1-75 | VICTOR LEONG-Filed CJA Form 21 Copy 2 approving payment to Stephen Chang dated 9-25-75.....Ward,J. |
| 10-1-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 3 appointing Geraldine H. Lin as interpreter on 9-23-75, dated 9-25-75.....Ward,J. |

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| DATE | PROCEEDINGS | Date Order Judgment |
|---|---|---|
| 10-1-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 2 approving payment to Caroline H. Lin for services rendered on 9-23-75, dated 9-29-75.....Ward,J. | |
| 10-1-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 3 appointing Caroline H. Lin as interpreter on 9-24-75, dated 9-29-75.....Ward,J. | |
| 10-1-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 2 approving payment to Caroline H. Lin for services rendered on 9-24-75, dated 9-29-75.....Ward,J. | |
| 10-2-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 3 appointing Caroline H. Lin as interpreter on 9-25-75, dated 9-29-75.....Ward,J. | |
| 10-2-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 2 approving payment to Caroline H. Lin for services rendered on 9-25-75, dated 9-29-75.....Ward,J. | |
| 10-2-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 3 appointing Caroline H. Lin as interpreter on 9-26-75, dated 9-29-75.....Ward,J. | |
| 10-2-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 2 approving payment to Caroline H. Lin for services rendered on 9-26-75, dated 9-29-75.....Ward,J. | |
| 10-6-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 3 appointing Caroline H. Lin as interpreter on 9-29-75, dated 10-2-75.....Ward,J. | |
| 10-6-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 2 approving payment to Caroline H. Lin for services rendered on 9-29-75, dated 10-2-75.....Ward,J. | |
| 10-6-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 3 appointing Caroline H. Lin as interpreter on 9-30-75, dated 10-2-75.....Ward,J. | |
| 10-6-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 2 approving payment to Caroline H. Lin for services rendered on 9-30-75, dated 10-2-75.....Ward,J. | |
| 10-14-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 3 appointing Caroline H. Lin as interpreter on 10-1-75, dated 10-9-75.....Ward,J. | |
| 10-14-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 2 approving payment to Caroline H. Lin for services rendered on 10-1-75, dated 10-9-75.....Ward,J. | |
| 10-14-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 3 appointing Caroline H. Lin as interpreter on 10-2-75, dated 10-9-75.....Ward,J. | |
| 10-14-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 2 approving payment to Caroline H. Lin for services rendered on 10-2-75, dated 10-9-75.....Ward,J. | |
| 10-14-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 3 appointing Caroline H. Lin as interpreter on 10-3-75, dated 10-9-75.....Ward,J. | |
| 10-14-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 2 approving payment to Caroline H. Lin for services rendered on 10-3-75, dated 10-9-75.....Ward,J. | |
| 10-14-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 3 appointing Caroline H. Lin as interpreter on 10-6-75, dated 10-9-75.....Ward,J. | |
| 10-14-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 2 approving payment to Caroline H. Lin for services rendered on 10-6-75, dated 10-9-75.....Ward,J. | |

| DATE | PROCEEDINGS |
|---|---|
| 10-14-75 | VICTOR LEONG-Filed deft's. affidavit & notice of motion for suppression of evidence and for discovery. |
| 10-14-75 | VICTOR LEONG-Filed MEMO ENDORSED on deft's. motion for suppression and discovery. Motion granted in accordance with oral decision rendered in open Court. .....Ward,J. |
| 10-15-75 | BING KIN LOW, et al., -Filed Government's Request to Charge. |
| 10-15-75 | WONG CHOW SHEK, - Filed Deft's. Request to Charge. |
| 10-2-75 | Trial continues. |
| 10-3-75 | Trial continues. |
| 10-6-75 | Trial continues. |
| 10-7-75 | Trial continues. |
| 10-8-75 | Trial continues. |
| 10-9-75 | Trial continues. Suppression hearing held as to deft. Leong. |
| 10-10-75 | Suppression hearing as to deft. Leong continued. Motion to suppress granted as to deft. Leong. Trial continued. |
| 10-14-75 | Trial continues. Overt Act #27 stricken. |
| 10-15-75 | Trial concluded. Jury deliberating. |
| 10-16-75 | Jury deliberating. |
| 10-20-75 | Jury deliberating. Verdict: Olsen, Leong & Wong found guilty. Louie Yiu Che found not guilty. Pre-sentence investigation ordered. Sentence date 11-18-75 Olsen - 9:30 A.M., Leong - 9:45 A.M., Wong - 9:45 A.M. Bail of Leong & Wong revoked. Remanded. Deft. Louie - bail exonerated & he is discharged...Ward,J. |
| 10-21-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 3 appointing Caroline H. Lin as interpreter on 10-7-75, dated 10-15-75.....Ward,J. |
| 10-21-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 2 approving payment to Caroline H. Lin for services rendered on 10-7-75, dated 10-15-75.....Ward,J. |
| 10-21-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 3 appointing Caroline H Lin as interpreter on 10-8-75, 10-9-75 & 10-10-75, dated 10-20-75.....Ward,J. |
| 10-21-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 2 approving payment to Caroline H. Lin for services rendered on 10-8-75, 10-9-75 & 10-10-75, dated 10-20-75...Ward,J. |
| 10-16-75 | YIU CHE LOUIE-Filed Remand - 9-26-75 - Deft. released from the custody of the U.S. Marshal. Bond posted as directed by the Court. |
| 10-22-75 | Filed Govt's. memorandum of law re: identification of Yiu Che Louie. |
| 10-22-75 | Filed Govt's. memorandum of law re: when cross examination brings out a prior inconsistent statement by a witness. |
| 10-22-75 | Filed Govt's. memorandum of law on admissibility of Lau Kin Song's agreement with the Govt. |
| 10-22-75 | VICTOR LEONG-Filed deft's. memorandum of law. |
| 10-22-75 | VICTOR LEONG-Filed Govt's. answer to deft's. memorandum of law. |

Cont'd. on Page #8

| DATE | PROCEEDINGS | Date Or. Judgment |
|---|---|---|
| 10-24-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 3 appointing Caroline H. Lin as interpreter on 10-14-75, 10-15-75, 10-16-75 and 10-20-75, dated 10-21-75.....Ward,J. | |
| 10-24-75 | YIU CHE LOUIE-Filed CJA Form 21 Copy 2 approving payment to Caroline H. Lin for services rendered on 10-14-75, 10-15 10-16-75 and 10-20-75, dated 10-21-75, .....Ward,J. | |
| 10-22-75 | FON YOU WING-Filed JUDGMENT & ORDER (, PROBATION (atty present) IMPOSITION OF SENTENCE is suspended on count 1. Deft. is placed on probation for a period of FIVE (5) YEARS. Probation to be supervised by Probation Department of the N.D.D.C. for the Northern District of California. Count 10 dismissed on motion of deft's. counsel with the consent of the Govt.....Ward,J. Issued copies 10-28-75. | |
| 10-22-75 | LEE LOUIE-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SEVEN (7) YEARS on count 3 to be followed by a THREE (3) YEAR SPECIAL PAROLE term. (T. 21, Sec. 841) Said sentence to run concurrently with sentence on Indictment 75 Cr. 172. BAIL rev'kd. Counts 1, 4 and 5 dismissed on motion of deft's. counsel with the consent of the Govt. .....Ward,J. Issued commitment 10-28-75. | |
| 11-06-75 | FON YOU WING-Filed CJA Form 20 Copy 3 appointing David Blackstone, as attorney for deft. dated 10-30-75.....Ward,J. | |
| 11-06-75 | FON YOU WING-Filed CJA Form 20 Copy 2 approving payment to David Blackstone, dated 10-30-75.....Ward,J. | |
| 10-31-75 | VICTOR LEONG & WONG CHOU SHEK-Filed ORDER appointing Shirley Moy as interpreter for a fee not to exceed $30.00 to assist probation in interviewing defts. .....Ward,J. | |
| 11-07-75 | Filed transcript of record of proceedings dated 9-9-75. | |
| 11-07-75 | Filed transcript of record of proceedings dated 9-22-75, 4:00 P.M. | |
| 11-07-75 | Filed transcript of record of proceedings dated 9-22-75, 4:10 P.M. | |
| 11-07-75 | Filed transcript of record of proceedings dated September 23,24,25,29, 1975. | |
| 11-07-75 | Filed transcript of record of proceedings dated October 1,2,3,6,7, 1975. | |
| 11-07-75 | Filed transcript of record of proceedings dated October 8,9,10,14, 1975. | |
| 11-07-75 | Filed transcript of record of proceedings dated October 15,16,20, 1975. | |
| 11-07-75 | VICTOR LEONG & WONG CHOU SHEK-Filed ORDER appointing Shirley Moy as interpreter for a fee not to exceed $30.00 to assist probation in interviewing defts. .....Ward,J. | |
| 11-10-75 | COURT CHAU-Filed the following papers received from Mag. Schreiber Chgs. No. 75-1091) Docket Entry Sheet; Copy of Magistrate's Final Commitment, Disposition Sheet, Copy of Indictment, S.F.S.T., C.J. Form 23 ; Def't's Financial Affidavit. | |

Rev. Civil Docket Continuation — Page #9

| | PROCEEDINGS | Date Order or Judgment Note |
|---|---|---|
| 7-75 | Filed transcript of record of proceedings dated 9-11-75. | |
| 5-75 | PON YOU WING-Filed commitment & entered return. Deft. released from custody and his return trip to San Francisco, Cal. funded this being place of arrest of deft. | |
| 6-75 | LEE LOUIE-Filed commitment & entered ret[illegible] delivered to Warden, M.D.C., N.Y.C. on 10-22-75. | |
| 7-75 | ROLAND CHU-Filed CJA Form 20 Copy 2 [illegible] o William Richman, dated 11-10-75.....Ward,J. | |
| 7-75 | VICTOR LEONG-Filed deft's. affirmation & notice of motion for an evidentiary hearing, a new trial or alternatively for a judgment of acquittal, ret. 11-18-75. | |
| 8-75 | Sentences adjourned to 12-16-75.....Ward,J. | |
| 9-75 | WONG CHOW SUEY- Filed Deft's affdvt & Notice of motion for an order pursuant to Rules 33 & 34 of the F.R.Cr.P. granting the Deft. a new trial or a judgment of acquittal, and as no further indicated. Ret. 12-16-75. | |
| -75 | [illegible]- Filed Deft's Affdvt in support of the pending motion for an order dismissing the indictment. | |
| -75 | LEE LOUIE- Filed Defts affdvt & Notice of Motion for an order pursuant to Rule 35 of the F.R.Cr.P for reduction of sentence.(Filed in 74 CR 1225) | |
| -75 | [illegible]- Filed affdvt of Alan R. Kaufman, AUSA, in opposition to Deft's motion to dismiss the indictment on the ground of double jeopardy. | |
| -75 | [illegible]- Filed affdvt of Alan R. Kaufman, AUSA, in response to the omnibus motions of Deft's seeking post-conviction relief. | |
| -75 | VICTOR LEONG- Filed stip. & order that Henry J. Beitel, of 233 Broadway, NYC, 10007, be and hereby is substituted as attorney of record for the Deft in the place and stead of his present attorney, and that the substitution take effect immediately. It is further represented that the trial transcrip has already been received and turned over to Henry J. Beitel for the purposes of appeal. SO ORDERED---CARTER,J. | |
| -75 | VICTOR LEONG- Filed MEMO ENDORSEMENT on Defts notice of motion for an evidentiary hearing, ect. Motion DENIED in accordance with oral decision rendered this date. IT IS SO ORDERED---WARD,J. (m/n 12-17-75). | |
| -75 | [illegible]- Filed MEMO ENDORSEMENT on Deft Notice of Motion filed 7-10-75 for an order dismissing the indictment on the grounds of "double jeopardy". Motion DENIED in accordance with oral decision rendered this date. IT IS SO ORDERED--- WARD,J. (m/n 12-17-75) | |
| -75 | WONG CHOW SUEY- Filed M[illegible]dorsement on Deft notice of motion for an order granting the Deft a new trial or judgment of acquittal filed 12-09-75. Motion DENIED in accordance with oral decision rendered this date. IT IS SO ORDERED--- WARD,J. (m/n 12-17-75) | |

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| DATE | PROCEEDINGS |
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| 12-16-75 | WONG CHOU SHEK- Filed Judgment and Commitment order- The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of [illegible] FIVE (5) YEARS to be followed by a Special Parole term of THREE (3) YEARS pursuant to Title 21, Section 841. Bail fixed in the amount of $100,000.00 cash or surety pending appeal. REMANDED in lieu of bail. In the event Deft. seeks bail requirements the limits are extended to California. Bail fixed at $7,500.00 in California is exonerated. Deft. to be given credit for time already served. ---WARD,J. (Right to Appeal & leave to file in Forma pauperus.) |
| 12-10-75 | LOUEEY CHAU- Deft. w/c. Thomas Concannon present, pleads GUILTY to COUNT #1 (only Ct). P.S.I. ordered. Sentence date 1-26-76 at 9:30 AM. Bail of $20,000. cash or surety continued. REMANDED in lieu of bail.---WARD,J. |
| 12-16-75 | ROBERT OLSEN- Filed Judgment & Commitment Order- The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of FIFTEEN (15) YEARS on COUNT #1, to be followed by a THREE (3) YEAR Special Parole term pursuant to Title 21, Sec. 841. FIFTEEN (15) YEARS on each of COUNTS 2,11, and 14 to be followed by a term of THREE (3) YEARS on a Special Parole. Said sentences on COUNTS 2,11, and 14 to run concurrently with sentence imposed on COUNT #1 and concurrently with sentence Deft. is presently serving. REMANDED.----WARD,J. (Right to take an Appeal & leave to file in Forma Pauperus.) |
| 12-16-75 | VICTOR LEONG- Filed Judgment & Commitment Order- The Deft. is hereby committed to the custody of the Atty General for imprisonment for a period of THREE (3) YEARS on COUNT #1 to be followed by a THREE (3) YEAR Special Parole term pursuant to Title 21, Sec. 841. THREE (3) YEARS on COUNT #6, to be followed by a THREE (3) YEAR Special Parole term. Said sentence on COUNT #6 to run concurrently with sentence imposed on COUNT #1. Deft. to be given credit for time already served. REMANDED--WARD,J. (Right to take an Appleal & leave to file in Forma Pauperus). |
| 12-19-75 | Pad Yau Wong filed transcript of proceedings dated 07-10-75 |
| 12-23-75 | WONG CHOU SHEK- Filed Deft's Notice of Appeal from the judgment of conviction entered on 12-16-75. (m/n 12-30-75) to Deft & US Atty |
| 12-23-75 | VICTOR LEONG- Filed Deft's Notice of Appeal from the judgment of conviction entered on 12-16-75. (m/n 12-30-75) to Deft & US Atty |
| 12-29-75 | ROBERT OLSEN- Filed Deft's Notice of Appeal from the Jury Verdict on 10-20-75 and from the sentence imposed on 12-12-75. (m/n 12-30-75). to Deft & US Attr. |

D. C. 109 Criminal Continuation Sheet

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| UNITED STATES OF AMERICA, | : | |
| - v - | : | |
| BING HIN LOW,<br>LI CHI YING, a/k/a "Robert Li",<br>WONG SHUE TEEN, a/k/a "Tony Wong",<br>JOHNNY CHAU,<br>PAUL JANG, a/k/a "Communist Pui",<br>VICTOR LEONG, a/k/a "Poon Choy Leong",<br>ERNST OLSEN,<br>CONNY ANDRE GUSTAFSSON,<br>STEINER FURU,<br>ERIK MAX HANSEN,<br>JOHN CHRISTIANSEN,<br>ARNE ANDERSEN,<br>BERNARD DALAN,<br>LEE LOUIE,<br>BILL FERN,<br>WONG CHOU SHEK, a/k/a "Ah Wong",<br>PON YOU WING, a/k/a "Ah Fu",<br>GEORGE KAY LEW, a/k/a "Ah Kay",<br>CHAN CHEUNG,<br>ENG PONG,<br>LAM SHING,<br>WEE SIK MOY, a/k/a "Ah Siah",<br>PHILIP CHOY TONG, a/k/a "NG Poy Yee",<br>ROLAND CHU and<br>LOUIE YIU CHE, a/k/a "Peter Louie",<br>a/k/a "Louie Gin", | : | INDICTMENT<br><br>75 Cr. [illegible] |
| Defendants. | : | |

The Grand Jury charges:

1. From on or about the 1st day of May, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, BING HIN LOW, LI CHI YING, a/k/a "Robert Li", WONG SHUE TEEN, a/k/a "Tony Wong", JOHNNY CHAU, PAUL JANG, a/k/a "Communist Pui", VICTOR LEONG, a/k/a "Poon Choy Leong", ERNST OLSEN, CONNY ANDRE GUSTAFSSON, STEINER FURU, ERIK MAX HANSEN, JOHN CHRISTIANSEN, ARNE ANDERSEN, BERNARD DALAN, LEE LOUIE, BILL FERN, WONG CHOU SHEK, a/k/a "Ah Wong", PON YOU WING, a/k/a "Ah Fu", GEORGE KAY LEW, a/k/a "Ah Kay", CHAN CHEUNG, ENG PONG, LAM SHING, WEE SIK MOY, a/k/a "Ah Siah", PHILIP CHOY TONG, a/k/a

"NG Poy Yee", ROLAND CHU and LOUIE YIU/CHE, a/k/a "Peter Louie", a/k/a Louie Gin", the defendants, MA SHU YE'UNG, a/k/a "Ma", ANAKE YENBOOKHAKUL, TONY MA, a/k/a "Ah Ming", CHOU CHO CHOI, WONG SHING HONG, SEE CHUN KAM, LAM KIN SANG, JOHN STEPPEN THONGKEN, JIMMY PANG, a/k/a "Pee", CHAN YUK WO, a/k/a "Tony Chan", CHAN YUK SHUI, CHOW WAI WING, a/k/a "Hing Pang", DING SEE YIN, a/k/a "Jimmy Chan", GEORGE WONG, a/k/a "Yee Wing Shing", LOW BOK MON, a/k/a "Norman Low" and NG POY/YU named herein as co-conspirators but not named as defendnats, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1), 841(b)(1)(A), 951(a)(1), 952(a), 953(a)(1) and 960(a)(1) and 960(b)(1) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants and co-conspirators unlawfully, intentionally and knowingly would import into the United States from places outside the United States, to wit, Thailand and Hong Kong, and elsewhere to the Grand Jury unknown, large quantities of heroin, a Schedule I narcotic drug controlled substance, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1), 841(b)(1)(A), 951(a)(1), 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

3. It was further part of said conspiracy that the said defendants and co-conspirators unlawfully, intentionally and knowingly would export from the United States to places outside the United States, to wit, Canada, large quantities of heroin, a Schedule I narcotic drug controlled substance, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1), 841(b)(1)(A), 953(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

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4. It was further part of said conspiracy that the said defendants and co-conspirators unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown, in violation of Section 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

The Defendants and Co-Conspirators[*]

The Sources of Supply

1. Co-conspirators MA SSU TS'UNG, a/k/a "Ma", TONY MA, a/k/a "Ah Ming" and ANAKE YENSOOKSAKUL were suppliers of heroin in and around the city of Bangkok, Thailand.

The Controller

2. Co-conspirator WONG SHING KONG established and controlled a heroin distribution network from Bangkok, Thailand to the United States and Canada.

The Smugglers

3. Defendants ERNST OLSEN, CONNY ANDRE GUSTAFSSON, STEINER FURU, ERIK MAY HANSEN, JOHN CHRISTIANSEN, ARNE ANDERSEN and BERNARD DALAN and co-conspirator JOHN STEFFEN THOMSEN were seamen who regularly travelled from Bangkok, Thailand, to the United States and Canada with large quantities of heroin.

North American Receivers

4. Co-conspirators LAM KIN SANG and SZE CHUM KAM and defendant LI CHI YING, a/k/a "Robert Li", lived in North America and regularly received heroin shipments from Bangkok, Thailand.

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[*] The descriptions herein relate to the period of the Indictment.

North American Distributors

5. Defendants KING HIN LOW, WONG SHUE TEEN, a/k/a "Tony Weng", PAUL JANG, a/k/a "Communist Pui" LEE LOUIE and WONG CHOU SHEK, a/k/a "Ah Weng" lived in North America and regularly distributed herein in Vancouver, Canada, New York, New York and San Francisco, California.

The Workers

6. Defendant JOHNNY CHA[illegible] and co-conspirators JIMMY FANG, a/k/a "Fee", CHAN YUK WO, a/k/a "Tony Chan", CHAN YUK SHUI, CHOW WAI MING, a/k/a "Ming Pang", DING SZE YIN, a/k/a "Jimmy Cham", and LOW BOK MON, a/k/a "Norman Low" lived in North America and worked in the North American herein distribution networks established by the North American Receivers and/or the North American Distributors.

The Buyers

7. Defendants VICTOR LEONG, a/k/a "Poon Choy Leong", PON YOU WING, a/k/a "Ah Pu", GEORGE KAY LEW, a/k/a "Ah Kay", CHAN CHEUNG, ENG FONG, LAM SHING, WEE SIK MOY, a/k/a "Ah Siah", BILL FERN, PHILIP CHOY TONG, a/k/a NG Poy Yee", ROLAND CHU and LOUIE YIU CHE, a/k/a "peter Louie", a/k/a "Louie Gin" lived in North America and made regular purchases of herein in Vancouver, Canada, New York, New York or San Francisco, California from the North American Receivers, North American Distributors and/or Workers.

The Means of the Conspiracy

8. Co-conspirators MA SSU TS'UNG, a/k/a "Ma", TONY MA, a/k/a "Ah Ming" and ANAKE YENSOOKSAKUL supplied in excess of 200 pounds of herein to co-conspirator WONG SHING KONG, who periodically arranged to smuggle quantities of the herein from Bangkok, Thailand and Hong Kong into the United States and Canada.

9. On at lease twelve separate occasions herein was smuggled into the United States and Canada in quantities ranging from 3,500 to 10,500 grams by defendants ERNST OLSEN,

CONNY ANDR USTAFSSON, STEINER FURU, ERIK MAX HANSEN, JOHN CHRISTIANS , ARNE ANDERSEN, BERNARD DALAN and co-conspirator JOHN STEFFEN THOMSEN.

10. On countless numbers of occasions defendant LI CHI YING, a/k/a "Robert Li" and co-conspirator SZE CHUN KAM distributed large quantities of heroin to BING HIN LOW.

11. On countless numbers of occasions co-conspirator LAM KIN SANG distributed large quantities of heroin to LEE LOUIE, WONG CHOU SHEK, a/k/a "Ah Wong", PON YOU WING, a/k/a "Ah Fu", GEORGE KAY LEW, a/k/a "Ah Kay", CHAN CHEUNG, ENG FONG, LAM SHING, WEE SIK MOY, a/k/a "Ah Sieh", PAUL JANG, a/k/a "Communist Pui", VICTOR LEONG, "Foon Choy Leong", PHILIP CHOY TONG, a/k/a NG Poy Yee", ROLAND CHU and LOUIE YIU CHE, a/k/a "Peter Louie", a/k/a "Louie Gin".

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. On or about June 1, 1971, at the Rusami Jewelry Store, Bangkok, Thailand, MA SSU TS'UNG, a/k/a "Ma" agreed to supply WONG SHING KONG with large quantities of heroin to be distributed in the United States.

2. On or about June 4, 1971, ERNST OLSEN met WONG SHING KONG in Bangkok, Thailand, and agreed to transport heroin from Bangkok, Thailand to the United States.

3. On or about June 6, 1971, in Bangkok, Thailand, ANAKE YENSOOSAKUL attempted to place 10,500 grams of heroin and 105 pounds of opium on board the M.S. Clifford Maersk.

4. On or about June 6, 1971, in Bangkok, Thailand, WONG SHING KONG received 10,500 grams of heroin and 105 pounds of opium from MA SSU TS'UNG, a/k/a "Ma" and ANAKE YENSOOSAKUL.

5. On or about June 9, 1971, WONG SHING KONG flew from Bangkok, Thailand to Kong Kong.

6. On or about June 14, 1971, ERNST OLSEN arrived in Tokyo, Japan.

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7. On or about August 14, 1971, WONG SHING KONG had a conversation with MA SSU TE'UNG, a/k/a "Ma" in Hong Kong.

8. On or about August 16, 1971, ERNST OLSEN visited the United States Consulate in Hong Kong.

9. On or about August 26, 1971, TONY MA, a/k/a "Ah Ming", drove WONG SHING KONG, ERNST OLSEN and four suitcases containing approximately 10,500 grams of herein to the airport in Bangkok, Thailand.

10. On or about August 26, 1971, ERNST OLSEN, carrying approximately 5,250 grams of herein, contained in two suitcases, registered at the George Washington Hotel, 23rd Street and Lexington Avenue, New York, New York.

11. On or about August 27, 1971, ERNST OLSEN delivered approximately 5,250 grams of herein to LAM KIN SANG at the George Washington Hotel, 23rd Street and Lexington Avenue, New York, New York.

12. On or about August 27, 1971, LAM KING SANG purchased a scale at the 5 & 10 Cents Store on Bowery Street, New York, New York.

13. On or about August 28, 1971, LAM KIN SANG delivered approximately 500 grams of herein to LEE LOUIE in the #1 Club at 1 East Broadway, New York, New York.

14. On or about September 3, 1971, ERNST OLSEN checked-out of the George Washington Hotel, 23rd Street and Lexington Avenue, New York, New York.

15. On or about September 5, 1971, WONG SHING KONG rented a house on Soi Papanit (Street), Bangkok, Thailand.

16. On or about September 6, 1971, LAM KIN SANG delivered approximately 500 grams of herein to LEE LOUIE in the #1 Club at 1 East Broadway, New York, New York.

17. During the week of September 12, 1971, LAM KIN SANG delivered approximately 500 grams of herein to

LEE LOUIE in the #1 Club at 1 East Broadway, New York, New York.

18. On or about September 10, 1971, LOW BOK MON, a/k/a "Norman Low" received approximately 1,000 grams of heroin from LEE LOUIE and delivered it to BILL FERN in New York, New York.

19. On or about September 10, 1971, BILL FERN arrived in Chicago, Illinois.

20. On or about September 16, 1971, VICTOR LEONG, a/k/a "Foon Choy Leong" registered at the George Washington Hotel, 23rd Street and Lexington Avenue, New York, New York, and thereafter received approximately 250 grams of heroin from LAM KIN SANG at the Tung On Association Gambling House, in New York, New York.

21. On or about October 2, 1971, in Bangkok, Thailand, WONG SHING KONG, CONNY ANDRE GUSTAFSSON and ERNST OLSEN delivered approximately 7,000 grams of heroin and 105 pounds of opium to STEINER PURU on board the M.S. Thomas Maersk, which sailed for the United States on October 3, 1971.

22. In or about early October, 1971, LAM KIN SANG, in possession of approximately 2,000 grams of heroin, registered at the Holiday Inn at 750 Kearney Street, San Francisco, California.

23. In or about early October, 1971, LAM KIN SANG went to the Dai Loy Gambling House, 614B Jackson Street, San Francisco, California, where he had a conversation with WONG CHOU SHEK, a/k/a "Ah Wong", FON YOU WING, a/k/a "Ah Fu" and GEORGE KAY LEW, a/k/a "Ah Kay".

24. In or about early October, 1971, LAM KIN SANG delivered approximately 1,000 grams of heroin to GEORGE KAY LEW, a/k/a "Ah Kay" at the Holiday Inn at 750 Kearney Street, San Francisco, California.

25. In or about early October, 1971, LAM KIN SANG

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delivered approximately 1,000 grams of heroin to FON YOU WING, a/k/a "Ah Fu" at the Holiday Inn at 750 Kearney Street, San Francisco, California.

26. From [illegible] or about mid-October, 1971 to in or about mid-November, 1971 WONG CHAU SHEK sold approximately 2,500 grams of heroin to LOUIE YIU CHE, a/k/a "Peter Louie", a/k/a "Louie Gin" in San Francisco, California.

27. From in or about mid-October, 1971 to in or about mid-December, 1971 WONG CHAU SHEK sold approximately 6,000 grams of heroin to PHILIP CHOY TONG, a/k/a "MC Poy Yee" and ROLAND CHU in San Francisco, California.

28. In or about mid-October, 1971, LAM KIN SANG delivered approximately 500 grams of heroin to LAM SHING in New York, New York.

29. In or about mid-October, 1971, TONY MA, a/k/a "Ah Ming" delivered approximately 4,200 grams of his own heroin and approximately 9,800 grams of heroin belonging to MA SSU TS'UNG, a/k/a "Ma" to WONG SHING KONG at Soi Papanit (Street), Bangkok, Thailand.

30. On or about October 23, 1971, in Bangkok, Thailand, JOHN CHRISTIANSEN received approximately 7,000 grams of heroin and thereafter departed Bangkok, Thailand on board the M.S. Trein Maersk for the United States.

31. On or about October 23, 1971, in Bangkok, Thailand, JOHN STEFFEN THOMSEN received approximately 9,450 grams of heroin and thereafter departed Bangkok, Thailand on board the M.S. Luna Maersk for the United States.

32. On or about November 8, 1971, in Bangkok, Thailand, ERIK MAX HANSEN received approximately 8,400 grams of heroin and thereafter departed Bangkok, Thailand on board the M.S. Lisa Maersk for the United States.

33. On or about [illegible], 1971 [illegible], a/k/a "Yeen Choy Leung" [illegible] at the George Washington Hotel on 23rd Street and Lexington Avenue, New York, New York.

34. On or about [illegible] 14, 1971, ERNST GLASER arrived in the [illegible] States on board Japan Airlines, Flight 5088.

35. On or about November 18, 1971, in Vancouver, Canada, WONG SHING KONG was introduced to KING KEE LOW by LI GEE KING, a/k/a "Robert Li."

36. On or about November 18, 1971, in Vancouver, Canada, KING KEE LOW told WONG SHING KONG that he wanted 2,500 grams of heroin immediately, 5,000 additional grams of heroin before Christmas, 1971, and 5,000 grams of heroin per month thereafter.

37. In or about late November, 1971, LAN KIN SANG delivered approximately 500 grams of heroin to ENG FONG at the Tung On Association in New York, New York.

38. On or about November 29, 1971, SEKEINER FUKU and GUNNY ANDER GUSTAVSSON arrived in New York on board the M.S. Thomas Maersk and delivered 7,000 grams of heroin to ERNST GLASER, who, in turn, delivered it to WONG SHING KONG.

39. In or about early December, 1971, WONG CHOW SUEK, a/k/a "Ah Wong" telephoned LAN KIN SANG and advised him that FOK YOU WING, a/k/a "Ah Fu" would come to New York to pick up an unspecified quantity of heroin.

40. In or about early December, 1971, FOK YOU WING, a/k/a "Ah Fu" received approximately 2,000 grams of heroin from LAN KIN SANG at the New Motor Inn, Queens, New York.

41. On or about December 3, 1971, ERNST GLASER and JOSEPH GRAF [illegible] Toronto, Canada and thereafter flew to Vancouver, Canada to deliver approximately 3,500 grams of heroin to LI GEE KING, a/k/a "Robert Li".

42. On or about December 7, 1971, in Vancouver, Canada, WONG SHING KONG met with LI CHI YING, a/k/a "Robert Li", JOHNNY CHAN, BING MIN LOW and WONG SHUE YKEN, a/k/a "Tony Weng".

43. On or about December 8, 1971, LAM KIN SANG arrived in Vancouver, Canada, where he met VICTOR LEONG, a/k/a "Poon Choy Leong" and PAUL JANG, a/k/a "Communist Pui".

44. On or about December 8, 1971, in Vancouver, Canada, WONG SHING KONG and LI CHI YING, a/k/a "Robert Li" delivered approximately 2,500 grams of heroin to BING MIN LOW.

45. On or about December 9, 1971, in Vancouver, Canada, PAUL JANG, a/k/a "Communist Pui" purchased approximately 1,500 grams of heroin from LAM KIN SANG.

46. On or about December 15, 1971, in San Francisco, California, WONG CHOU SHEK, a/k/a "Ah Wong" and POK YOU WING, a/k/a "Ah Fu" possessed approximately 500 grams of heroin with intent to distribute.

47. On or about December 19, 1971, WONG SHING KONG had a telephone conversation with WONG CHOU SHEK, a/k/a "Ah Wong".

48. On or about December 21, 1971, WONG SHING KONG and ERNEST OLSEN left the United States.

49. On or about December 24, 1971, in Bangkok, Thailand, WONG SHING KONG delivered a sum of money to MA SSU TS'UNG, a/k/a "Ma".

50. On or about December 25, 1971, JOHN STEFFEN THORSEN, in possession of approximately 9,450 grams of heroin, arrived in New York on board the M.S. Lunn Maersk.

51. In or about late December, 1971, WEE SIK HOY, a/k/a "Ah Siah" possessed approximately 500 grams of heroin with intent to distribute.

52. In or about the last week of [illegible], 1971 HENRY GLEEN flew to Vancouver, Canada.

53. On or about January 2, 1972, ARNE ANDERSEN arrived in Vancouver, Canada and delivered approximately 7,250 grams of heroin to HENRY GLEEN and LI CHI YING, a/k/a "Robert Li".

54. On or about January 6, 1972, ERIK HANSEN, in possession of approximately 8,000 grams of heroin, arrived in New York on board the M.S. Idet Knorsk.

55. In or about the first week of January, 1972, TONY MA, a/k/a "Ah Ming" delivered approximately 7,000 grams of heroin to WONG SHING KONG in Bangkok, Thailand.

56. On or about January 12, 1972, in Vancouver, Canada, ARNE ANDERSEN delivered approximately 7,000 grams of heroin to HENRY GLEEN and LI CHI YING, a/k/a "Robert Li".

57. On or about January 14, 1972, HENRY GLEEN and ARNE ANDERSEN arrived in Japan.

58. On or about January 30, 1972, in Bangkok, Thailand, KING KIN LOW had a conversation with MA SHU TS'UNG, a/k/a "Ma".

59. On or about February 2, 1972, in Hong Kong, KING KIN LOW had a conversation with SZE CHUN KAN.

60. On or about February 12, 1972, SZE CHUN KAN arrived in Vancouver, Canada.

61. From on or about February 12, 1972, through August 2, 1972, SZE CHUN KAN sold heroin in pound and multi-pound quantities, on a weekly basis, to KING KIN LOW.

62. On or about February 18, 1972, LAM KIN SANG leased an apartment at 60 East Broadway, New York, New York.

63. On or about March 1, 1972, SHEINER PUNU arrived in Vancouver, Canada and delivered approximately 7,250 grams of heroin to SZE CHUN KAN.

64. On or about March 8, 1972, ERNST OLSEN and LAM KIN SANG delivered approximately 9,450 grams of heroin to an apartment at 60 East Broadway, New York, New York.

65. On or about March 13, 1972, in Hong Kong, JOHN STEFFEN THOMSEN received approximately 8,400 grams of heroin from STEINER PURU and WONG SHING KONG.

66. On or about March 14, 1972, ARNE ANDERSEN delivered approximately 7,250 grams of heroin to SZE CHUN KAM in Vancouver, Canada.

67. In or about the latter part of March, 1971, in Bangkok, Thailand, WONG SHING KONG received approximately 52,500 grams of heroin from MA SSU TS'UNG, a/k/a "Ma", TONY MA, a/k/a "Ah Ming" and CHOU CHO CHOI.

68. On or about March 21, 1972, STEINER PURU delivered approximately 7,250 grams of heroin to SZE CHUN KAM in Vancouver, Canada.

69. In or about the latter part of March, 1972, LAM KIN SANG delivered approximately 500 grams of heroin to CHAN CHEUNG in New York, New York.

70. In or about the latter part of March, 1972, LAM KIN SANG delivered approximately 250 grams of heroin to CHAN CHEUNG in New York, New York.

71. On or about April 4, 1972, in New York, New York, JIMMY PANG, a/k/a "Poo" sold approximately 444 grams of heroin to an undercover agent of the Bureau of Narcotics and Dangerous Drugs.

72. On or about April 7, 1972, BERNARD DALAN arrived in Vancouver, Canada and delivered approximately 7,250 grams of heroin to WONG SHING KONG and SZE CHUN KAM.

73. On or about April 11, 1972, in New York, New York, JIMMY PANG, a/k/a "Poo", CHOW WAI MING, a/k/a "Mink Pang" DING SZE YIN, a/k/a "Jimmy Chan" CHAN YUK [illegible], a/k/a "Tony Chan" and CHAN YUK SHUI possessed approximately 2,317 grams of heroin with intent to distribute.

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74. On or about April 12, 1972, in New York, New York LAM KIN SANG, CHAN YUK WO, a/k/a "Tony Chan" and CHAN YUK SHUI possessed approximately 2,617 grams of heroin with intent to distribute.

75. On or about April 15, 1972, WONG SHING KONG and BING HIN LOW arrived in Hong Kong and met WONG SHUK TEEN, a/k/a "Tony Wong".

76. On or about April 19, 1972, JOHN STEFFEN THOMSEN arrived in New York with approximately 8,400 grams of heroin on board the M.S. Luna Maersk.

77. On or about July 19, 1972, CONNY ANDRE GUSTAFSSON delivered approximately 7,250 grams of heroin to ERNST OLSEN in Montreal, Canada.

78. On or about August 2, 1972, SZE CHUN KAM left Vancouver, Canada for Bangkok, Thailand.

79. On or about December 24, 1972, JOHN STEFFEN THOMSEN possessed approximately 8,400 grams of heroin in Brooklyn, New York with intent to distribute.

(Title 21, United States Code, Section 846 and 963.)

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SECOND COUNT

The Grand Jury further charges:

On or about the 26th day of August, 1971 in the Southern District of New York,

LINDSEY OLSEN

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 5,250 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

THIRD COUNT

The Grand Jury further charges:

On or about the 28th day of August, 1971 in the Southern District of New York,

LEE LOUIE

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 500 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FOURTH COUNT

The Grand Jury further charges:

On or about the 6th day of September, 1971 in the Southern District of New York,

LEE LOUIE

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 500 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FIFTH COUNT

The Grand Jury further charges:

During the week of September 12, 1971, in the Southern District of New York,

LEE LOUIE

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 500 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

SIXTH COUNT

The Grand Jury further charges:

On or about the 16th day of September, 1971 in the Southern District of New York,

VICTOR LEONG, a/k/a "Poon Choy Leong"

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 250 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

SEVENTH COUNT

The Grand Jury further charges:

In or about the middle of October, 1971 in the Southern District of New York,

LAM SHING

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 500 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

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EIGHTH COUNT

The Grand Jury further charges:

In or about late November, 1971, in the Southern District of New York,

ENG FONG

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 500 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

NINTH COUNT

The Grand Jury further charges:

On or about the 29th day of November, 1971 in the Southern District of New York,

STEINER FURU and CONNY ANDRE GUSTAFSSON

the defendants, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 7,000 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

TENTH COUNT

The Grand Jury further charges:

In or about December, 1971, in the Southern District of New York,

FON YOU WING, a/k/a "Ah Fu"

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 2,000 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

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ELEVENTH COUNT

The Grand Jury further charges:

On or about the 3rd day of December, 1971 in the Southern District of New York,

ERNEST OLSEN

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 3,500 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

TWELFTH COUNT

The Grand Jury further charges:

In or about late December, 1971, in the Southern District of New York,

WEE SIK MOY, a/k/a "Ah Siah"

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 500 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

THIRTEENTH COUNT

The Grand Jury further charges:

On or about the 6th day of January, 1972 in the Southern District of New York,

ERIK MAX HANSEN

the defendnat, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 8,400 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FOURTEENTH COUNT

The Grand Jury further charges:

On or about the 8th day of March, 1972 in the Southern District of New York,

ERNEST OLSEN

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 9,450 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FIFTEENTH COUNT

The Grand Jury further charges:

In or about late March, 1972, in the Southern District of New York,

CHAN CHEUNG

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 500 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

SIXTEENTH COUNT

The Grand Jury further charges:

In or about late March, 1972, in the Southern District of New York,

CHAN CHEUNG

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 250 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FOREMAN

[redacted]
United States Attorney

Rev. Civil Docket Continuation

| | PROCEEDINGS | Date Ordered or Judgment Noted |
|---|---|---|
| | Paul Burt (Kng Fong)<br>276 5th Ave.N.Y.C. 10001<br>MU 6-1368 | |
| | Robert Mitchell (Lam Shing)<br>51 Chambers St.N.Y.C.10007<br>WO 2-0675 | |
| | David Blackstone (Pou You Hing)<br>401 B'way.N.Y.C.<br>226-6684 | |
| | Irving Katcher (Ernest Olsen)<br>38 Park Row,N.Y.C.10038<br>BA 7-0073 | |
| | Henry J. Boitel (Victor Leong)<br>233 Broadway<br>N.Y.C. 10007<br>RE 2-8104 | |

GOVERNMENT
EXHIBIT
U.S. DIST. COURT
S.D. OF N.Y.
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MEMORANDUM AGREEMENT

June 30, 1975

To: Lam Kin Sang

From: Alan R. Kaufman
Assistant United States Attorney

Subject: Terms of Lam Kin Sang's Cooperation with the United States Attorney's Office for the Southern District of New York and the Drug Enforcement Administration.

This memorandum sets forth all the terms and conditions of Lam Kin Sang's cooperation with the United States Attorney's Office for the Southern District of New York and the Drug Enforcement Administration (hereinafter "Government").

1. Lam Kin Sang has agreed to cooperate fully with the Government and to give complete, accurate and truthful information to the Government concerning all criminal matters about which he has knowledge. This cooperation includes his testifying at any trial at which the Government determines his information and knowledge would constitute relevant testimony.

2. Lam Kin Sang has previously made a motion to reduce his sentence under Rule 35 of the Federal Rules of Criminal Procedure, which motion was denied by the Judge because it was not made within 120 days after Lam Kin Sang's sentence was final as required by the Rule*. Despite this, Lam Kin Sang has requested that the Government inform the Judge of Lam Kin Sang's cooperation, and the Government has agreed to do this, though Lam Kin Sang has been told by the Government that the Judge is without the power to change his sentence in any way.

3. The Government will make part of Lam Kin Sang's prison record a letter setting forth the extent of his cooperation, and will bring that cooperation to the attention of the Parole Board, and request that the Parole Board give his cooperation whatever consideration it deems appropriate in deciding whether to grant parole.

* A Rule 35 motion was also made on Lam's behalf within the 120 day period, but before he had decided to cooperate. That motion was denied.

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4. If Lam Kin Sang, or his attorney, requests a presidential pardon, the Government will inform the Pardon Attorney in Washington, D. C. of the extent of his cooperation and similarly request that it be given appropriate consideration.

5. In view of the fact Lam Kin Sang has a family consisting of a wife, three children, and a father, without visible means of support, the Government will attempt to procure a small, monthly living expense allowance sufficient to help the family meet the basic necessities of life, not to exceed $150 per month.

6. In view of the fact that Lam Kin Sang has testified, and will testify, against major narcotics violators who could pose a threat to his life, the Government will seek authorization to have Lam and his family relocated upon his release from jail, and put into the United States Marshal Witness Protection Program.

7. The Government will inform the Immigration and Naturalization Service of the extent of Lam Kin Sang's cooperation, and advise the Immigration and Naturalization Service that the cooperation should be given appropriate consideration when they are called on to decide if Lam Kin Sang should be deported, upon his release from jail. In addition, the Government will advise the Immigration and Naturalization Service that if deported to Hong Kong, the location from which Lam Kin Sang came to the United States, Lam Kin Sang's life would in all likelihood be in jeopardy due to his cooperation.

8. When Lam Kin Sang completes his testimony, the Government will request that the Bureau of Prisons designate Lam Kin Sang to the Federal Correctional Institution at Danbury, Connecticut.

9. In the event that Lam Kin Sang refuses to testify, or withholds information, or fails to tell the truth, this agreement is vitiated. If Lam Kin Sang fails to be truthful under oath, it is understood that the

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Government may prosecute him for perjury.

Lam Kin Sang 林健生
LAM KIN SANG

PAUL J. CURRAN
United States Attorney for
the Southern District of
New York

By: Alan R. Kaufman
ALAN R. KAUFMAN
Assistant United States Attorney

Translated to Lam Kin Sang
by Laura Ho, who hereby states
that she read this memorandum agreement
to Lam Kin Sang in Cantonese, and that
he stated to me that he fully understands
the contents hereof.

Laura Ho
Laura Ho

EXHIBIT
DIST. COURT
OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | : | |
| -v- | : | STIPULATION |
| BING HIN LOW, et al., | : | 75 Cr. 229 (RJW) |
| Defendants. | : | |

IT IS HEREBY STIPULATED AND AGREED between the defendants Victor Leong, Ernst Olsen, Wong Chou Shek, and Louie Yiu Che by their attorneys, David Keegan, Esq., Irving Katcher, Esq., Harry Singer, Esq., and Robert Hartmann, Esq., respectively, and Paul J. Curran, United States Attorney for the Southern District of New York by Alan R. Kaufman, Assistant United States Attorney, that the relevant provisions of the agreement that Lam Kin Sang signed on June 30, 1975, pertaining to his cooperation with the Government, are as follows:

1. Lam Kin Sang has previously made a motion to reduce his sentence under Rule 35 of Federal Rules of Criminal Procedure, which motion was denied by the Judge because it was not made within 120 days after Lam Kin Sang's sentence was final as required by the Rule.* Despite this, Lam Kin Sang has requested that the Government inform the Judge of Lam Kin Sang's cooperation, and the Government has agreed to do this, though Lam Kin Sang has been told by the Government that the Judge is without the power to change his sentence in any way.

* A Rule 35 motion was also made on Lam's behalf within the 120 day period, but before he had decided to cooperate. That motion was denied.

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2. "The Government will make part of Lam Kin Sang's prison record a letter setting forth the extent of his cooperation, and will bring that cooperation to the attention of the Parole Board, and request that the Parole Board give his cooperation whatever consideration it deems appropriate in deciding whether to grant parole."

3. "If Lam Kin Sang, or his attorney, requests a presidential pardon, the Government will inform the Pardon Attorney in Washington, D.C. of the extent of his cooperation and similarly request that it be given appropriate consideration."

4. "In view of the fact Lam Kin Sang has a family consisting of a wife, three children and a father, without visible means of support, the Government will attempt to procure a small monthly living expense allowance sufficient to help the family meet the basic necessities of life, not to exceed $150 per month."

5. "The Government will inform the Immigration and Naturalization Service of the extent of Lam Kin Sang's cooperation, and advise the Immigration and Naturalization Service that the cooperation should be given appropriate consideration when they are called on to decide if Lam Kin Sang should be deported, upon his release from jail."

6. "When Lam Kin Sang completes his testimony, the Government will request that the Bureau of Prisons designate Lam Kin Sang to the Federal Correctional Institution at Danbury, Connecticut."

7. "In the event that Lam Kin Sang refuses to testify, or withholds information, or fails to tell the truth, this agreement is vitiated. If Lam Kin Sang fails to be truthful under oath, it is understood that the Government may prosecute him for perjury."

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| OVERT ACT | DATE | PLACE | PERSONS PRESENT |
|---|---|---|---|
| 1 | 6/1/71 | Rusami Jewelry Store Bangkok, Thailand | Ma Ssu Ts'ung, Wong Shing Kong, and Sze Chun Yan |
| 2 | 6/4/71 | Bangkok, Thailand | Wong Shing Kong, Ernst Olsen |
| 3 | 6/6/71 | M.S. Clifford Maersk, Bankok Thailand (Harbor) | Wong Shing Kong, Anake Yensoo-ksakul |
| 4 | 6/6/71 | Victory Hotel, Bankok, Thailand | Wong Shing Kong, Ma Ssu Ts'ung, Anake Yensoo-ksakul |
| 5 | 6/9/71 | Bangkok, Thailand and Hong Kong | Wong Shing Kong |
| 6 | 6/14/71 | Itami, Japan | Ernst Olsen |
| 7 | 8/14/71 | Hong Kong Hyatt Hotel | Wong Shing Kong, Ma Ssu Ts'ung |
| 8 | 8/16/71 | Hong Kong | Ernst Olsen |
| 9 | 8/26/71 | Airport, Bangkok Thailand | Wong Shing Kong, Ernst Olsen, Tony Ma |
| 10 | 8/26/71 | George Washington Hotel, New York City | Ernst Olsen |
| 11 | 8/27/71 | George Washington Hotel, New York City | Ernst Olsen, Lam Kin Sang |
| 12 | 8/27/71 | Bowery Street New York City | Lam Kin Sang |
| 13 | 8/28/71 | Number 1 Club, 1 East Broadway New York City | Lam Kin Sang, Lee Louie |
| 14 | 9/3/71 | George Washington Hotel, New York City | Ernst Olsen |
| 15 | 9/5/71 | Soi Papanit Bangkok, Thailand | Wong Shing Yen |

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6-52

| OVERT ACT | DATE | PLACE | PERSONS PRESENT |
|---|---|---|---|
| 16 | 9/6/71 | Number 1 Club, 1 East Broadway New York City | Lam Kin Sang, Lee Louie |
| 17 | 9/12/71 | Number 1 Club, 1 East Broadway New York City | Lam Kin Sang, Lee Louie |
| 18 | 9/10/71 | New York City | Lam Kin Sang, Lee Louie, Norm Low, Bill Fern |
| 19 | 9/10/71 | Airport, Chicago Illinois | Bill Fern, U.S. Marshal |
| 20 | 9/16/71 | George Washington Hotel and Tung On Association, New York City | Victor Leong, Lam Kin Sang |
| 21 | 10/2/71 | M.S. Thomas Maersk Bangkok, Thailand | Wong Shing Kong, Conny Gustafsson, Ernst Olsen, Steiner Furu |
| | On or about | | |
| 22 | 10/11/71 | Holiday Inn, 750 Kearney Street San Francisco, California | Lam Kin Sang |
| | On or about | | |
| 23 | 10/11/71 | Dai Loy Gambling House, 614 B Jackson Street San Francisco, California | Lam Kin Sang, Wong Chou Chak, Pon You Ming, George Kay Lew |
| | On or about | | |
| 24 | 10/15/71 | Holiday Inn 750 Kearney Street San Francisco, California | Lam Kin Sang, George Kay Lew |
| | On or about | | |
| 25 | 10/15/71 | Holiday Inn 750 Kearney Street San Francisco, California | Lam Kin Sang, Pon You Ming |



GPO : 1978 O - 681-655

| OVERT ACT | DATE | PLACE | PERSONS PRESENT |
|---|---|---|---|
| | From on or about | | |
| 26 | 10/15/71 to 11/20/71 | Three sales consisting of 1/2 pound, 2 pounds and 2 pounds, respectively. The first two sales occurred in the vicinity Stockton and Union Streets, San Francisco, California. The last sale took place in the vicinity of Vallejo and Columbus St., San Francisco, California | First sale: Pon You Wing: second sale: Pon You Wing, Lam Kin Sang and Wong Chau Shek: third sale: Pon You Wing and Wong Chau Shek. Louie Yiu Che was present at all sales. |
| | From on or about | | |
| 27 | 10/15/71 to 12/15/71 | Six sales consisting of 2 pounds, 2 pounds, 2 pounds 3 pounds, 2 pounds and 3 pounds. The first four sales took place in the vicinity of 672 Jackson Street, San Francisco, California. The last two sales took place in the vicinity of 1523 Hyde Street San Francisco, California | First sale: George Kay Lew, Philip Choy Tong: Second sale: George Kay Lew, Philip Choy Tong, Roland Chu; third sale: George Kay Lew Philip Choy Tong, Roland Chu: fourth sale: George Kay Lew, Philip Choy Tong, Roland Chu fifth sale: George Kay Lew, Roland Chu, sixth sale: George Kay Lew, Roland Chu |
| | On or about | | |
| 28 | 10/15/71 | New York City, Chinatown area. | Lam Kin Sang, Lam Shing |
| | On or about | | |
| 29 | 10/15/71 | Soi Papanit Bangkok, Thailand | Wong Shing Kong, Tony Ma |

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| OVERT ACT | DATE | PLACE | PERSONS PRESENT |
|---|---|---|---|
| 30 | 10/23/71 | M.S. Trein Maersk Bangkok, Thailand | Wong Shing Kong, Sze Chun Kam, Ernest Olsen, John Christiansen |
| 31 | 10/23/71 | M.S. Luna Maersk Bangkok, Thailand | Wong Shing Kong, Sze Chun Kam, Ernest Olsen, John Steffen Thomsen |
| 32 | 11/8/71 | M.S. Lica Maersk Bangkok, Thailand | Wong Shing Kong, Ernst Olsen, Erik Max Hansen |
| 33 | 11/12/71 | George Washington Hotel, New York City | Victor Leong |
| 34 | 11/14/71 | Kennedy Airport Queens, New York | Ernst Olsen |
| 35 | 11/18/71 | 2750 Saint Catherine 's Street, Vancouver, Canda | Wong Shing Kong, Bing Hin Low, Li Chi Ying, Johnny Chau |
| 36 | 11/18/71 | 2750 Saint Catherine's Street, Vancouver, Canada | Wong Shing Kong, Bing Hin Low, Li Chi Ying, Johnny Chau |
| 37 | On or about 11/20/71 | Tung On Association, New York City | Lam Kin Sang, Eng Pong |
| 38 | 11/29/71 | Pier 11, Brooklyn New York and 69-46 199th Street, Queens, New York | Steiner Furu, Conny Gustafsson, Ernst Olsen, Lam Kin Sang, Wong Shing Kong |
| 39 | On or about 12/1/71 | New York City and San Francisco, California | Lam Kin Sang, Wong Chou Shek |
| 40 | 12/11/71 | Kew Motor Inn, Queens, New York | Lam Kin Sang, Pon You Wing |
| 41 | 12/3/71 | Toronto Canada and 2750 Saint Catherine's Street, Vancouver, Canada | Ernst Olsen, Johnny Chou, Li Chi Ying |
| 42 | On or about 12/7/71 | 2750 Saint Catherine's Street, Vancouver, Canada . | Wong Shing Kong, Li Chi Ying, Johnny Chou, Bing Hin Low Wong Shue Teen |



GPO: 1978 O - 681-822

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| OVERT ACT | DATE | PLACE | PERSONS PRESENT |
|---|---|---|---|
| 43 | 12/8/71 | Vancouver, Canda | Lam Kin Sang, Victor Leong, Paul Jang |
| 44 | On or about 12/8/71 | Vancouver, Canada | Wong Shing Kong, Li Chi Ying, Bing Kin Low |
| 45 | 12/9/71 | Vicinity of 2750 Saint Catherine's Street, Vancouver, Canada | Wong Shing Kong, Li Chi Ying, Johnny Chau, Paul Jang, Lam Kin Sang |
| 46 | 12/15/71 | Vicinity of Broadway Street and Grant Avenue, San Francisco, California | San Francisco, California Police Officers; Pon You Wing, Wong Chou Shek, Special Agents of the Drug Enforcement Administration. |
| 47 | On or about 12/19/71 | 69-49 199th Street Queens, New York | Wong Shing Kong |
| 48 | 12/2/71 | Kennedy Airport, Queens, New York | Wong Shing Kong, Ernst Olsen |
| 49 | On or about 12/24/71 | Busami Jewelry Store, Bangkok, Thailand | Wong Shing Kong, Ma Ssu Ts'ung |
| 50 | 12/25/71 | Pier 11 Brooklyn New York | John Steffen Thomsen |
| 51 | On or about 12/20/71 | New York City, Chinatown area. | Lam Kin Sang, Wee Sik Moy |
| 52 | On or about 12/27/71 | Vancouver, Canada | Ernst Olsen |
| 53 | 1/2/72 | Vancouver, Canada | Arne Andersen, Ernst Olsen, Li Chi Ying |
| 54 | 1/6/72 | Pier 11, Brooklyn New York | Erik Max Hansen |
| 55 | On or about 1/3/72 | Soi Pananit, Bangkok, Thailand | Wong Shing Kong, Tony Ma |



GPO : 1972 O - 467-630

| OVERT ACT | DATE | PLACE | PERSONS PRESENT |
|---|---|---|---|
| 56 | On or about 1/12/72 | Vancouver, Canda | Arne Andersen Ernst Olsen, Li Chi Ying |
| 57 | 1/14/72 | Haneda, Japan | Ernst Olsen, Arne Andersen |
| 58 | On or about 1/30/72 | Grace Hotel, Bangkok, Thailand | Wong Shing Kong, Ping Kin Low, Ma Ssu Ts'ung |
| 59 | On or about 2/2/72 | Hong Kong | Ping Kin Low, Sze Chun Kam, Wong Shing Kong |
| 60 | 2/12/72 | 2750 Saint Catherine's Street Vancouver, Canada | Sze Chun Kam, Li Chi Ying |
| 61 | From on or about: 2/12/72 to 8/2/72 | In and about the City of Vancouver, Canada | Ping Kin Low, Sze Chun Kam |
| 62 | 2/18/72 | 60 East Broadway New York, New York | Lam Kin Sang, renting agent |
| 63 | 3/1/72 | Hotel Vancouver Vancouver, Canada | Sze Chun Kam, Steiner Furu |
| 64 | 3/8/72 | 60 East Broadway New York, N.Y. | Lam Kin Sang, Ernst Olsen |
| 65 | 3/13/72 | M.S. Luna Maersk Hong Kong | John Steffen Thomsen, Steiner Furu |
| 66 | 3/14/72 | Biltmore Motor Hotel, Vancouver, Canada | Arne Andersen, Sze Chun Kam, Ernst Olsen |
| 67 | On or about 3/15/72 | Soi Pananit, Bangkok, Thailand | Wong Shing Kong, Tony Ma, Chou Cho Choi |
| 68 | 3/21/72 | Vancouver, Canada | Sze Chun Kam, Steiner Furu |
| 69 | On or about 3/21/72 | New York City | Lam Kin Sang, Chan Cheung |

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| OVFRT ACT | DATE | PLACE | PERSONS PRESENT |
|---|---|---|---|
| | On or about | | |
| 70 | 3/25/72 | New York City | Lam Kin Sang<br>Chan Cheung |
| 71 | 4/4/72 | Apartment 1B<br>14 1st Avenue<br>New York, New York | Jimmy Pang<br>Special Agent of the Drug Enforcement Administration. |
| 72 | 4/7/72 | Biltmore Motor Hotel, Vancouver, Canada | Bernard Dalan, Sze Chun Kam, Wong Shing Kong |
| 73 | 4/11/72 | Apartment 1B<br>14 1st Avenue<br>New York, New York | Special Agents of the Drug Enforcement Administration; Jimmy Pang, Chow Wai Hing, Ding Sze Yin, Chan Yuk Wo, Chan Yuk Shui |
| 74 | 4/12/72 | Apartment 1B<br>60 East Broadway<br>New York, N.Y. | Special Agents of the Drug Enforcement Administration, Chan Yuk Wo, Chan Yuk Shui |
| 75 | 4/15/72 | Airport, Hong Kong | Wong Shing Kong, Bing Hin Low, Wong Shue Teen |
| 76 | 4/19/72 | Pier 11, Brooklyn, New York | John Steffen Thomsen |
| 77 | 7/19/72 | Montreal, Canda | Conny Andre Gustafsson, Ernst Olsen |
| 78 | 8/2/72 | Vancouver, Canada | Sze Chun Kam |
| 79 | 12/24/72 | Vicinity of Flatbush and De Kalb Avenues, Brooklyn, N.Y. | Special Agents of the Drug Enforcement Administration, John Steffen Thomsen, Wong Shing Kong |

2. With respect to Count Two see particulars set forth under Overt Acts 10 and 11.

3. With respect to Count Three see particulars set forth under Overt Act 13.

4. With respect to Count Four see particulars set forth under Overt Act 13.

5. With respect to Count Five see particulars set forth under Overt Act 17.



GPO : 1972 O - 497- 822

6. With respect to Count Six see particulars set forth under Overt Act 20.

7. With respect to Count Seven see particulars set forth under Overt Act 28.

8. With respect to Count Eight see particulars set forth under Overt Act 37.

9. With respect to Count Nine see particulars set forth under Overt Act 38.

10. With respect to Count Ten see particulars set forth under Overt Act 40.

11. With respect to Count Eleven see particulars set forth under Overt Act 41.

12. With respect to Count Twelve see particulars set forth under Overt Act 51.

13. With respect to Count Thirteen see particulars set forth under Overt Act 54.

14. With respect to Count Fourteen see particulars set forth under Overt Act 64.

15. With respect to Count Fifteen see particulars set forth under Overt Act 69.

16. With respect to Count Sixteen see particulars set forth under Overt Act 70.

17. In addition to the particulars heretofore set forth in connection with Count One, the Government will prove at trial that on February 23, 1973, in Vancouver, Canada, Bing Hin Low received delivery of approximately 20 pounds of heroin from Sze Chun Kam. Moreover, the proof will show that at the urging of Bing Hin Low, Johnny Chow and Tony Tham, Wong Shing Kong and Sze Chun Kam brought 70 pounds of heroin from Seattle, Washington to Vancouver, Canada on June 12, 1973.

18. Additional co-conspirators not named in the indictment are Dale Ferguson, Tony Tham and Ming Foy Wong.



GPO : 1972 O - 481-803

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Discovery and Inspection

Rule 16(a)

19. The Government will provide each defendant with copies of his written or recorded statements or confessions, if any, within the possession, custody or control of the Government, the existence of which is presently known or which by the exercise of due diligence may become known to the attorney for the Government.

20. The Government will provide each defendant with copies of the results and/or reports of scientific tests or experiments made in connection with this case.

Rule 16(b)

21. The Government will provide each defendant with copies of the documents which it at trial will seek to prove were at one time in the actual or constructive possession of said defendant or were procured or made directly or indirectly at said defendant's request.

Dated: New York, New York
March 14, 1975

Yours, etc.

PAUL J. CURRAN,
United States Attorney for the
Southern District of New York
Attorney for the United States
of America.

By: [signature]
EUGENE H. FARICY
Assistant United States Attorney
Office & Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007

GPO : 1975 O - 601-820

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6-52

TO:

Irving Katcher, Esq.
30 Park Row
New York, N.Y.

William Madden, Esq.
821 Franklin Ave
Garden City, N.Y. 11530

Harry Singer, Esq.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

BING HIN LOW, et al.,

Defendants.

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**NOTICE OF MOTION**

Index No. 75 Cr. 229

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Victor Leong sworn to September 22, 1975, and upon all other proceedings had herein, the undersigned will move before the Hon. Robert J. Ward, United States District Judge, Southern District of New York, for an order pursuant to Rule 41, Federal Rules of Criminal Procedure suppressing tangible evidence seized from Victor Leong during an illegal search conducted on or about May 2, 1972 by Royal Canadian Mounted Police in Vancouver, British Columbia acting at the request of United States law enforcement officials; to discover any correspondence between United States law enforcement officials or memoranda of such communciations to prove the defendants claim that the Royal Canadian Mounted Police were acting at the request of United States government officials; to suppress any evidence discovered as a result of the said illegal search, or as a result of "leads" developed from said illegal search; to suppress a taped interview of Victor Leong made at the time of his arrest in Canada because the interview was, at the time it was made, intended to be used in a criminal prosecution in the United States, the questions were prepared or suggested by United States Officials and no Miranda warnings were given

to the defendant prior to the interview, and finally to suppress statements allegedly made to an Assistant United States Attorney by Leong upon his arrival in New York.

Dated: Garden City, New York
September 22, 1975

Yours etc.,

McCoyd & Keegan
Attorneys for the defendant
Victor Leong

To: Hon. Paul Curran
United States Attorney
For the Southern District of New York
Attorney For the United States
of America

Irving Katcher, Esq.
Attorney for defendant, Olsen

Harry Singer, Esq.
Attorney for defendant, Kong Chou Shek

Robert Hartmann, Esq.
Attorney for defendant, Louie Yui Chi

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

Index No. 75 Cr. 229
(R.J.W.)

AFFIDAVIT

BING HIN LOW, et al.,

Defendants.

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State of New York )
County of New York ) ss.:
Southern District of New York)

Victor Leong being duly sworn deposes and says:

1. Sometime in May, 1972, while I was staying at a hotel in British Columbia, I was awakened in the middle of the night by members of the Royal Canadian Mounted Police.

2. The Royal Canadian Mounted Police told me I was under suspicion as a person who used drugs. They searched my entire room, rummaged through all my belongings and found nothing.

3. They did not arrest me, nor did they show me a search warrant. But they seized my telephone book and some other personal papers and have never returned these items to me.

4. I have been informed that this illegal search was made at the behest of United States Narcotics Agents and I have reason to believe this is so, particularly now that the United States government intends to introduce into evidence some items which I believe were seized from me at that time.

5. In October or November, 1975, I was arrested pursuant to the request of the United States for the purpose of extraditing me. Once again my lodgings were searched, although

I was arrested on a public street and not near my lodgings. I understand that the United States government intends to introduce items seized from my person and my lodgins as well as a tape of an interrogation conducted by the Royal Canadian Mounted Police at this time.

6. I was not advised of my right to remain silent on either occasion as required by Canadian law, and from the questions asked me and the comments of the Royal Canadian Mounted Police, I believe both incidents were a result of requests received from officials of the United States government. In fact, I believe the questions asked me on the second interrogation, at least, were prepared or suggested by American officials for use at my trial.

7. After some eight months in jail while the extradition proceedings were in progress, I was placed in the custody of a United States Agent for the flight from Vancouver to New York. Following a fifty-hour trip and after a sleepless night, I was further interrogated, without my attorney being present, by an Assistant United States Attorney, who well knew that I had retained counsel, Douglas Jung, of Vancouver to represent me on my case. I may have been read my rights as claimed by the government, but I certainly did not understand them as they have since been explained to me. I was tired, hungry and scared by the intimidatory tactics of the Assistant United States Attorney. In addition, I have difficulty understanding English, particularly technical legal concepts, unless the person to whom I am speaking, speaks slowly and distinctly. There was no interpreter present at this interrogation, and I did not understand that I had the right to speak

with an attorney who would represent me free of charge, if I had no money to hire an attorney, before I answered any questions.

WHEREFORE, I respectfully request the Court to issue an order:

(a) Suppressing all tangible evidence seized from me on or about May, 1972, and any evidence discovered as a result of said illegal seizure, or any evidence discovered as a result of leads developed from the items seized;

(b) Suppressing all tangible evidence seized from me in October or November, 1975, and any evidence discovered as a result of said seizure and evidence discovered as a result of leads developed from the items seized;

(c) Directing the government to make available to me all notes, correspondence, memoranda or reports regarding the cooperation of the Canadian officials with the American officials at the time of the two seizures;

(d) Suppressing all statements allegedly made by me at the time of the two seizures and at the time I was brought to New York, and any evidence discovered as a result of said statements and any evidence discovered as a result of leads developed from said statements;

(e) Directing the government to make available to me any tape recordings, resulting from electronic eavesdropping or tapes resulting from wiretaps, on which my voice is heard or my name mentioned, and all logs, transcripts, warrants, affidavits, court orders and letters of authority signed by any United States or Canadian officials pertaining to said eavesdropping and/or wiretaps.

Victor Leong

Sworn to before me this 22nd
day of September, 1975.

jwm

(In open court)

THE COURT: Miss Kruger, will you call the case set down for trial this morning at 10:00 a.m.

(Case called)

MR. KAUFMAN: The Government is ready, your Honor.

MR. HARTMANN: The defendant Louie Yui Che is ready.

MR. KATCHER: Defendant Olsen is ready and present in court.

MR. KEEGAN: For the defendant Victor Leong, the defendant is ready, your Honor.

Mr. Singer is outside. I will get him. Mr. Singer is not here, but his client is.

THE COURT: Very well. We will await Mr. Singer's arrival.

(Pause)

THE COURT: Do any of the attorneys have any matters they wish to take up with the Court which relate to their clients only and which do not relate to Mr. Singer's client in any way?

MR. KEEGAN: Your Honor, I do on behalf of Mr. Leong. I have a motion to suppress certain evidence adduced from him. May I hand it up to the Court now?

And certain statements made when he was brought to the U. S. Attorney in New York by the Canadian Royal Mounted Police.

THE COURT: I have read the papers which were handed up to me.

I note the arrival of Mr. Singer.

MR. SINGER: Yes. I must apologize, your Honor. I left this morning earlier intentionally to be here on time and ran into a serious accident on the road.

THE COURT: The Court takes note of the inclement weather and, to bring you up to date, when I noted you were not here, I asked the other attorneys if they had any matters they wished to present to the Court which didn't concern your client.

Let me go back only one step. I asked if counsel would indicate they were ready for trial, and I received an affirmative response from the Government and your three co-counsel. I would ask if you are ready to proceed on behalf of the defendant Shek.

MR. SINGER: Yes, your Honor.

THE COURT: Very well.

To continue to bring you up to date, when I asked counsel if there were any matters they wished to take up with the Court, I was presented with a motion on

behalf of Victor Leong which was presented by Mr. Keegan and I have just finished reading the papers. This is a motion to suppress material allegedly obtained from Mr. Leong during the search, and also to suppress certain statements which he is alleged to have made.

You are up to date. That is as far as we have gone.

Do you have any questions?

MR. SINGER: No, your Honor. Thank you.

THE COURT: Mr. Keegan, the first order of business would, I would suggest, be that Mr. Leong sign the affidavit.

MR. KEEGAN: Yes, your Honor.

THE COURT: Thank you, Mr. Keegan.

Mr. Kaufman?

MR. KAUFMAN: Your Honor, may I request, since Mr. Leong has signed it and since it has not been notarized, it appear on the record?

THE COURT: It has been notarized. Mr. Keegan is a notary. It contains his stamp and seal.

Mr. Kaufman, I indicated I have read the papers and I would ask if, as and when you have finished reading them yourself, that you apprise the Court of the Government's position on this motion.

MR. KAUFMAN: I completed reading them, your Honor.

Again, my first observation, as it was last evening on Mr. Hartmann's motion, is the timeliness of it. Mr. Keegan has known for some time about the existence of a telephone book received from Mr. Leong. He has known for some time about statements taken from Mr. Leong. He has had weeks and weeks to file his motions, and here he does it on the morning of trial, and even with all that time he still files it without any legal citations and memo of law.

THE COURT: This is a very interesting legal question which you have raised here relative to alleged illegal conduct outside of the United States by officers of the Royal Canadian Mounted Police allegedly acting at the request of a United States Government official. I would suggest that citations here would be helpful to the Court.

You may proceed, Mr. Kaufman.

MR. KAUFMAN: Your Honor --

MR. KATCHER: Your Honor, I have a motion.

THE COURT: I haven't finished with the present one yet.

MR. KATCHER: I'm sorry.

THE COURT: You will have your opportunity.

MR. KAUFMAN: Your Honor, I don't perceive this motion as the type of motion that, if successful, would preclude the Government from continuing its prosecution of Victor Leong, so I see no reason why the trial can't commence while we are awaiting Mr. Keegan, at least the Government's request to file additional papers.

THE COURT: Let me inquire if within the next day or so it is your intention to present any tangible evidence or statements relative to Mr. Leong which are covered here in this motion.

MR. KAUFMAN: Not within the next few days, no.

THE COURT: All right.

What about mentioning it in your opening statement? Can you make an opening statement making out a case against Mr. Leong without commenting on this particular aspect of the case as it relates to him?

MR. KAUFMAN: We had not intended to mention it and we will not.

MR. KEEGAN: Fine.

THE COURT: I suggest then that I will reserve decision on the motion and await receipt of additional authorities.

MR. KEEGAN: Fine.

THE COURT: Is that satisfactory, Mr. Keegan?

MR. KEEGAN: That is, your Honor.

THE COURT: All right.

MR. KEEGAN: There is one other matter, as long as I am on my feet, I would like to mention.

During the deposition of the witness Lam he made frequent references when he was given an opening to do so to his need for protection and the offer of protection by the United States authorities. I expect that the same will be true of Wong Shing Kong, and I would suggest that the Government be instructed to advise their witnesses that they are not to bring out questions of their security, their need for protection, threats, danger to their family, unless they directly relate to some threats made by defendants on trial. I think it's very prejudicial and I don't know that any threats were made.

MR. KAUFMAN: Your Honor, part of the agreement, I know, with Wong Shing Kong was that if he cooperates the Government would provide him with protection. If it is defense counsel's request that we not elicit that and we instruct our witness not to testify that that is part of his agreement, I suppose we can instruct the witness to do so, just as long as defendants don't come back at us

and accuse us of not eliciting the whole agreement or withholding information.

MR. KEEGAN: Are all defense counsel with me that there be no comments about threats or security of the witness?

MR. KATCHER: Yes.

THE COURT: Or to comment in any way that the entire agreement hasn't been set forth, because once you do that you basically open the door. Obviously, if you attempt to capitalize on this, it would be unfair from the other point of view.

I take it from Mr. Keegan's statement and from the silence of the three co-counsel who sit with him that the defense counsel do not anticipate making a point which would open the door on the subject of the witness having agreed or sought protection, physical protection, of the United States Government.

If that is the case, certainly I anticipate that the Government should (a) warn its witnesses not to blurt out such things unsolicited, and (b) not to solicit such information, and I would expect the defendants will not capitalize on it.

Needless to say, in the event someone breaches this understanding, I will attempt to take immediate

corrective action.

Does that take care of that matter, gentlemen?

MR. KEEGAN: Yes, your Honor, it does.

There is one connected situation. I don't recall precisely the testimony because it doesn't relate to Mr. Leong, but Lam testified that he prevented, I believe, Wee Sik Moy from shooting another co-defendant who had gambled away $4,000 rather than buy narcotics with it as he had been instructed. It does not relate to any defendants on trial, and I think that also is quite prejudicial to these defendants, and I don't think it's necessary in any way to the Government to make its case here.

I would request that that testimony also be deleted and the witness instructed not to bring that out at trial.

THE COURT: Is it your intention, Mr. Kaufman and Mr. Flannery, to bring this information out on direct examination?

MR. FLANNERY: Your Honor, involved in this incident are several of the co-conspirators, and to understand intelligently what the transaction involved it is necessary to explain that Lam interceded on behalf of co-conspirator Jimmy Ding with Wee Sik Moy's associate,

whose name I forget at this moment, and to eliminate that element of the conversation which results in Lam's intercession is to make the entire transaction absolutely unintelligible.

THE COURT: In other words, you are saying that this came to the fore in a conversation which Lam had with another co-conspirator outside of the presence of Mr. Keegan's client?

MR. FLANNERY: That's correct.

THE COURT: I see. And you say that the conversation was in furtherance of the conspiracy?

MR. FLANNERY: Yes, your Honor.

THE COURT: Well, I suppose keeping conspirators alive to a certain extent is in furtherance of a conspiracy.

Do you think we could eliminate reference to shooting and just say that he protected the co-conspirator without getting involved with he made certain that the fellow would not be shot? It might be a little less inflammatory.

MR. FLANNERY: Perhaps in the conversation that Lam relates it could be amended to state that one of the Chen brothers informed him that Jimmy Ding had been threatened, rather than indicate that he would be killed, and Lam intervened in setting up the business

transaction to smooth the ruffled feathers of the co-conspirator and customer and the like.

THE COURT: That is obviously a much less inflammatory approach. I think that should satisfy you, Mr. Keegan.

MR. KEEGAN: Perhaps Mr. Flannery can stop and the Court can see it in its full implications because none of these defendants were present and had anything to do with this particular --

THE COURT: That is why I asked whether this was alleged to be a conversation in furtherance of the conspiracy.

I would suggest when we come close to that point, if you are aware of the sequence of events, you could, of course, request a side bar or bench or robing room conference, and I would grant your request and we will deal with it at that time.

MR. KEEGAN: Thank you, your Honor.

THE COURT: All right, Mr. Keegan.

I think I saw -- let's see, Mr. Kaufman is up -- I think I saw Mr. Katcher get up and say something about a motion.

Do you want to speak about this first?

MR. KAUPMAN: Yes. While we are on the issue of

threats or protection, a problem has already arisen with respect to a witness by the name of Pon You Wing, and I have discussed this matter principally with Mr. Singer who represents Wong Chou Shek.

I anticipate that after Pon You Wing testifies on direct it may very well be that defense counsel will elicit from him prior inconsistent statements to his testimony here at trial. In that event, it is the Government's intention on redirect to explain those prior inconsistencies by eliciting from the witness that he was in fear of his life from the defendants on trial.

I have already informed Mr. Singer of that and he is on notice as to what the Government will elicit on redirect should he bring out the prior inconsistencies on cross. I have no intention of eliciting it on direct. I just wanted to place it on the record that defense counsel have been notified of this.

THE COURT: I would suggest that in the event the door is open you can take advantage of the opportunity to walk through it. At such time as you do, I of course suggest that you exercise care to be certain the door is open so that you don't walk through a closed door.

But aside from that, I think that is within the ambit of the manner in which the case is tried.

Is there anything you wanted to bring to my attention further before I turn to Mr. Katcher?

MR. KAUFMAN: No, sir.

MR. KATCHER: On behalf of my client, you will recall I served on the district attorney and upon yourself several months ago a motion to dismiss the current indictment on the basis this indictment involves the question of double jeopardy.

THE COURT: As well as collateral estoppel.

MR. KATCHER: Right.

And in view of the fact yc · Honor has not yet ruled upon that motion I thknk your Honor indicated unofficially that you will wait and see what develops during the course of the trial before your Honor will pass judgment one way or another upon the merits of my application.

But for the purpose of the record I must at this time, your Honor, ask your Honor, in view of the fact your Honor has not as of this moment decided that motion which we are all well aware of, I respectfully suggest that the case on trial which involves my client, Mr. Olsen,be severed to such time as that motion which is now pending before you undetermined is determined, because to place him on trial at this point in time without judgment

having been exercised as to the merits of the application we are again subjecting him, assuming for the moment that the application is meritorious, to unnecessary and harsh treatment under our Constitution.

I must protect the record by making this motion, as I indicated to your Honor.

THE COURT: Number one, the original motion to which you had reference, which bears the Court's file stamp of July 10th, is before the Court now. I deem the motion to have been made timely, to have been renewed now, and relative to the motion I will adhere to my original determination to reserve decision on it.

Relative to your motion for severance, I believe that that matter does lie in my discretion, and taking all of the circumstances into account -- and I now have a fair background relative to this case -- I, within the exercise of my discretion, do not find that Mr. Olsen would be prejudiced by going to trial on this indictment at this time, with the one safeguard being that I certainly will, as the evidence here develops, consider the matter of alleged double jeopardy or collateral estoppel.

Accordingly, having noted that the double jeopardy-collateral estoppel motion is pending, I will at this time deny the motion for a severance.

Q At around this time did you go anywhere?

A Yes.

Q Where di d you go?

A I went to Vancouver.

Q About when did you go to Vancouver?

A In the beginning of April in the year '72.

Q Do you remember exactly what date?

A I cannot remember.

Q I direct your attention to Page 16 and ask if that refreshes your recollection as to the exact date you arrived in Vancouver.

A Yes.

Q What date was that?

A 5 April 1972.

Q Before you went to Vancouver did you meet anybody else from Bangkok?

A Yes.

Q Whom did you meet?

A Mr. Bernard Dalan.

Q How did you meet Mr. Dalan?

MR. SINGER: Your Honor, I have an objection to this last line of questioning involving all the transactions between Hong Kong and Bangkog and Bangkok and Vancouver as being irrelevant to the conspiracy charged in the indictment,

and I would like to have a conference on it if it is necessary.

THE COURT: I will hear you.

(At the side bar)

MR. SINGER: At this point, your Honor, the last line of questions since luncheon recess has been related to what appears to be transactions between Vancouver and Bangkok and, as I read the indictment, there is only a charge here that there was a conspiracy to import into the United States from Bangkok and there is no charge of importing into Vancouver, Canada, from Bangkok, and that, in any event, I don't think this Court would have jurisdiction over such a violation.

And there is an allegation that there was to be a conspiracy exporting from the United STates to Vancouver. However, this recent testimony deals strictly with transactions directly from Bangkok and Hong Kong to Vancouver.

Just because this witness was also involved in a conspiracy to import into the United States does not thereby make those transactions involving Bangkok and Vancouver relevant to this conspiracy as charged in this indictment, and I would make a motion to strike all the testimony concerning transactions that took place after Mr. Wong Shing Kong left the United States sometime in December

of 1971 up until and including the testimony that has so far been adduced.

There may be subsequent testimony relating to the United States again, but I don't see how these transactions with Vancouver and Bangkok are in any way related to the conspiracy as charged.

THE COURT: Mr. Kaufman?

MR. KAUFMAN: Your Honor, as part of the conspiracy as charged in its indictment there were overt acts that relate specifically to these shipments. Part of the overall conspiracy charged were shipments of heroin from New York to Vancouver. Part of one of the first shipments to New York involved heroin transported from New York to Vancouver. Another part involved in the conspiracy was to ship heroin from Vancouver to the United States and the Government is entitled to prove everything that was done in connection with this conspiracy as part of the one single conspiracy. The Government is entitled to prove it.

The fact that we couldn't charge it as a substantive count doesn't prevent us from proving it.

THE COURT: In the conspiracy count the Government has set forth at the beginning four separate paragraphs.

Passing from the first to Paragraph 2, it is alleged that it was part of the conspiracy that the defendants

and co-conspirators would import into the United States from places outside the United States, to wit, Thailand and Hong Kong, and elsewhere, to the grand jury unknown, large quantities of heroin.

Paragraph 3 alleges that it was further part of said conspiracy that the defendants and co-conspirators wwuld export from the United States to places outside the United States, to wit, Canada, large quantities of heroin.

So it does not appear -- I am now looking at Paragraph 4 -- that it was at any time alleged in the indictment -- now, it may have been in a bill of particulars -- that it was at any time alleged that it was a part of the conspiracy that the defendants and co-conpsirators would import into Canada from places outside of the United States, to wit, Thailand and Hong Kong and elsewhere, large quantities of heroin.

Maybe I misapprehend the indictment. I know what you say about the overt acts, because I have been following the overt acts as his testimony has been progressing, but my first reaction is that there seems to be some merit to counsel's argument. And if I have not read the indictment correctly, or I have overlooked something, I look to you now to correct me.

MR. KAUFMAN: No, your Honor obviously is correct

in construing the first part of the indictment. I just want to point out that Overt Act 68 refers to a shipment of approximately 7,250 grams to Vancouver, Overt Act 72 refers to a shipment of 7,250 grams, Overt Act 56 refers to a shipment of approximately 7,000 grams to Vancouver.

THE COURT: I suppose, in a manner of speaking, Mr. Singer, that the overt acts, because they are alleged, do broaden the scope of the conspiracy. The acts were alleged; therefore, we can't claim that they are a surprise.

The indictment, in essence, is the pleading, and it would seem that if proof is adduced within the ambit of the pleading it would be relevant.

I will pass the ball back to you now. I don't think we can claim surprise.

I have a question. Despite the fact that I have indicated that the indictment itself seems to outline the parts of the conspiracy, my question is, really, don't I have to read the entire conspiracy count, including the overt acts alleged, and if the matter is within those overt acts and the overt acts were not stricken prior to trial, is not the material relating thereto relevant?

MR. SINGER: Your Honor, with respect to that, prior to trial and prior to the introduction of the evidence that is being brought out from this witness, it

was unclear as to whether there would be shown a connection between the conspiracy to import into Vancouver and the conspiracy to import into the United States.

It is my position from listening to the testimony now that what is developing is the possibility of two separate and distinct conspiracies, one to import into Vancouver from Bangkok and one to import into the United States from Bangkok.

If that be the case, then I would move to strike those overt acts and also move that the Court instruct the jury that if they find that there is more than one conspiracy that they must acquit the defendants of the conspiracy as alleged in this indictment. Otherwise, I would move for a mistrial.

And I am now trying to preclude this testimony from going to the jury if it turns out that it is irrelevant to the conspiracy as charged in this indictment.

THE COURT: At the very minimum, wouldn't the proof of similar acts be appropriate? In other words, wouldn't the wordl-wide exporting and importing be appropriate as proof of similar acts?

I have difficult in accepting your argument.

Let me hear from Mr. Kaufman if there is something else he wants to add.

MR. KAUFMAN: The point the Government will go into next -- since you already stated it, I need not pursue that any further with respect to Mr. Singer's points -- I think the law on multiple conspiracy where you have an individual involved in large quantities of narcotics drugs at the same time with basically the same participatns, the fact that he has a customer in one place and a customer in another place doesn't change the fact of the conspiracy.

I think the proof esatblishes that Wong Shing Kong was involved in one overall conspiracy and they were all members of that same conspiracy. The fact that they were two separate customers doesn't change anything.

MR. SINGER: My understanding of the conspiracy law in this circuit in connection with the Borelli case is it is important to determine what was in the mind of the major figure at the time he was conspiring and doing the acts he was doing. If he believed that he had two independent conspiracies operating at the same time, then these would not be admissible, and also certainly not be admissible against my client who I understand is being held in her on a conspiracy theory, only on the theory that the buyers, distributors and lower echelon people can conspire with the actual importers.

I understand that to be the law. I don't accept

that as being the law, but it is in this circuit, I understand.

I believe that that law does not extend to a totally independent conspiracy which this Court, in my opinion, has no jurisdiction over if it turns out that it is a separate and distinct conspiracy between Bangkok and Canada. If it was to be alleged that these are subsequent similar acts in order to establish the conspiracy here then, their weight would have to be different and the Court would have to instruct as to the weight of this evidence and what it was to be used for, that it would not be admissible against these defendants.

THE COURT: Do you feel it's necessary to pursue this particular facet of your proof, Mr. Kaufman? It would appear that you have presented a very substantial picture now and I am only querying you as to whether this does represent a gilding of the lily.

MR. KAUFMAN: Your Honor, there is one more shipment to go, your Honor. The Government, I think, in its opening probably represented to the jury a quantity of heroin we were going to prove as coming into the United States and Canada.

THE COURT: If they come along in summation, if you stop now, and they say he didn't prove all he said he

was going to prove coming into the United STates and Canada, you may get up and rebut.

In other words, if you are being cut short in your proof by an objection of all the defendants -- and I haven't heard from the others yet -- I would certainly not permit them to capitalize on it in any way in their summations and say, "Well, he didn't prove as much of the importation into Canada as he said he was going to."

I think that would be unfair.

MR. KAUFMAN: Your Honor, my feeling is he is just about ready to tell us about a shipment that Dalan takes to Vancouver and the only one after that is one more ship that sailed from Bangkok that Olsen goes and meets -- I believe it's in Montreal -- and takes to Vancouver, and that is it.

We have gone this far and the Government believes it's perfectly proper, and therefore would like to finish the line.

THE COURT: Well, they haven't objected up to now, so you are all right on that score, but the fact they haven't objected doesn't mean that once they do object you should proceed.

Now, I perceive a conflict here between the defendant Victor Leong and the defendant Ernst Olsen when

we hear talk about separate conspiracies, Mr. Katcher. Of course, that cuts against your double jeopardy argument.

MR. KATCHER: That is why I am not saying anything, your Honor. To be very candid with you, I can appreciate Mr. Singer's argument, but I have my own position to maintain on behalf of my own client, so I have to be consistent with my position. If I didn't have that matter pending, why, needless to say, I would join in Mr. Singer's application.

THE COURT: Very well. You don't join the application.

MR. KATCHER: No, I can't.

THE COURT: I don't say you have to or shouldn't. I perceive your problem.

I would ask Mr. Keegan and Mr. Hartmann if they take a position on this particular application.

MR. KEEGAN: I do,your Honor. If they are not going to connect this up in some way then we have prejudice and a mistrial. My man comes in in Vancouver and they have an idea he has something to do with all the shipments.

THE COURT: Then you join in the objection?

MR. KEEGAN: I certainly do.

MR. HARTMANN: And I join in the objection.

MR. SINGER: Your Honor, with respect to the

comment by the Court that we have not yet objected up to this point, I didn't object up to this point because I was under the impression there was going to be a link between this and the conspiracy as I believe it to be, that is the American conspiracy, so to speak, and I do now move to strike the testimony concerning all transactions that went directly from Bangkok to Vancouver, and also other places outside the United States to Vancouver.

I might specifically point out that a transaction which this witness testified about about morphine going from Bangkok to Hong Kong, I in no way concede the relevance of that with respect to that conspiracy and that I specifically move to strike.

MR. KAUFMAN: Your Honor, I will state the Government's position again. The conspiracy charged an international conspiracy with the source in Bangkok --

THE COURT: And moving large quantities of drugs around the world; is that it?

MR. KAUFMAN: Right. As far as the United STates is concerned, as far as what we can prosecute here, we can charge as a criminal violation that part of that entered the United States. That does not prevent the Government from proving the overall conspiracy which involves morphine to Hong Kong, which involved opium to New York, which

involved heroin to many places and the Government submits it has the right to prove the overall conspiracy.

THE COURT: The motion is denied. The three defendants who objected have their exceptions.

(In open court)

THE COURT: You may proceed, Mr. Kaufman.

MR. KAUFMAN: Mr. Reporter, can you read the last question and answer?

(Record read)

Q Mr. Wong, how did you meet Mr.Dalan?

A Mr. Olsen brought Mr. Dalan to my home to meet me.

Q And did you have a conversation?

A Yes.

Q What was that conversation?

A I told him that if he brings the two suitcases to Vancouver he could obtain $2,000. And I also told Mr. Dalan that for the second trip he could have half a pound -- half a unit.

Q How much heroin was Mr. Dalan supposed to take with him?

A 20 pounds in two suitcases.

Q Then, I take it, you went to Vancouver; is that right?

Q How did you send the heroin out?

A This time by ship.

Q Which ship?

A The Thomas Maersk.

Q Who was the seaman on that ship who was carrying the heroin for you?

A Mr. Gustaffson.

Q About when was it that you sent this heroin out?

A I think it was about in May 1972.

Q Where was this heroin destined?

A Mr. Gustaffson told me that after this trip to New York he refused to do any more. After he left the ship he wanted to return home for a vacation.

3.3 Q I don't think you answered my question. My question was where was the heroin destined for?

A Vancouver.

Q Do you know by what route?

MR. KEEGAN: I will make the same objection at this time that we brought up at the side bar.

THE COURT: Yes. Same ruling.

A When the ship arrived in Montreal then Mr. Gustaffson was signed off at Montreal. Mr. Olsen and Mr. Gustaffson will meet over there. Then when Mr. Gustaffson met Mr. Olsen they will both flew over to

MR. KAUFMAN: Objection, your Honor. I don't think he testified he had transactions.

THE COURT: Let's go back one question, Counsel. I don't recall that he did either.

You were asking him questions in that area. He has acknowledged hearing the name, but I think we ought to go back one question.

Sustained.

Q Do you recall personally having with Lam sold narcotics to Lee Louie in Chinatown?

A I know there was a person with the last name Lee, but I do not know who he was.

Q Did you make a sale of narcotics on more than one occasion to a person by the name of Lee in Chinatown in the company of Lam?

MR. KAUFMAN: Objection. This is outside the scope of direct, outside the scope of the indictment.

I think if Mr. Katcher would establish a date, it would come clear it is outside the scope of this case.

MR. KATCHER: The relevancy of my question, if it does not relate to the indictment, I will ask it be stricken.

MR. KAUFMAN: May we approach the side bar? I think Mr. Katcher said something significant.

THE COURT: Yes.

(At the side bar)

MR. KAUFMAN: Your Honor, I've been sitting her patiently all afternoon with the suspicion of what Mr. Katcher was doing was trying to lay some sort of record for his double jeopardy motion, trying to show this case is the same as the other cases.

Number one, it is the Government's position it is not an issue for the jury but for your Honor to decide. I think Mr. Katcher, whether consciously or unconsciously, admitted that when he said it relates tothe three indictments.

Mr. Katcher is trying to elicit testimony about all the witness' deals from '67 to '72. That is not the purpose of this trial. That is not the correct purpose of defense to try --

THE COURT: It doesn't seem to me that it is a question for the jury. The double jeopeardy is only a question for the Court. I think what I have to do to answer it is to determine what the transactions here consist of and then match them against the transactions in the other case or cases.

MR. KATCHER: If you want to take his testimony without the presence of the jury to show one continuing conspiracy from '68 to the end of '72, I will be more than glad to do that.

MR. KAUFMAN: Your Honor, I don't think we should do it in the middle of the trial.

MR. KATCHER: While it is true it is not within the province of the jury to hear this, there is no other way of establishing it.

THE COURT: The only problem is, it also becomes prejudicial to the co-defendants in that range afield. Once you do that, the Government has every right in the world to come back on cross-examination. We are sitting here with an indictment which starts on or about the 1st day of May 1971, and goes subsequent to that.

MR. KATCHER: To date.

THE COURT: To date is correct.

You have, in prior questions, and you have just done it again, you have been eliciting or attempting to elicit answers relative to a history that goes back to 1968, for example, when he met your client and it does appear true that the purpose of your doing it is to establish a record for your double jeopardy motion.

But the problem that I see, among other things, unless your co-defendants choose not to object, and if they choose not to object I may let you do it, but it would seem to me, and it is up to me as well as protecting the rights of your client to also protect the rights of the three

co-defendants, and by bringing this in now, if I let it go in, you would permit the Government all sorts of latitude.

Up to this moment, your co-defendants' counsel have remained silent, but I must suggest that the jeopardy that may attach may be more to their clients than to yourself.

MR. KATCHER: They are not involved in the two indictments, your Honor.

MR. SINGER: Your Honor, with respect to that, on behalf of Wong Chou Shek I would at this time move for a severance of this case from Mr. Olsen.

I believe that the information coming in now is prejudicial to my client, Wong Chou Shek, and that in the event that a motion is granted with respect to Mr. Olsen and his double jeopardy motion, I will then move for a mistrial on the basis of this information that is coming now, is improperly joined, and my client has nothing to do with this information.

THE COURT: This had nothing to do with the Government. If the Government had done this, I would say I would be listening very carefully, but when your co-counsel has elicited this information, it's the Government who stepped up here just now and asked for a side bar and

is pointing out the serious problems which could arise by a continued examination in this area.

I do believe, Mr. Katcher, that it is not necessary for you and not appropriate for you to get into these other indictments in front of this jury.

I repeat: I feel that the obligation which I have is to review the record in this case and then match it up against any other record to determine whether there is a matchup, and if there is, your motion would properly lie, and if there isn't it should properly be denied. But I don't think you do it by proving the other cases as well, or at least retrying the other cases before this jury.

MR. KATCHER: Only the one case I referred to, your Honor.

THE COURT: Yes, but you have spent a fair amount of time on that.

MR. KATCHER: The same persons were mentioned, the two Louies and Bill Fern. Another one was mentioned in the indictment --

MR. KAUFMAN: Your Honor, this is simply not a jury issue.

THE COURT: If you wish to inquire relative to anything contained within the four corners of this indictment, you have every right to do so, but it seems to

me by going afield, as you seem to be doing at this point, you are laying your co-defendants open to serious problems themselves.

Mr. Singer has just interposed an objection. He seeks at this point a severance. If the conduct had been that of the Government, I might say there would be a serious problem, but since you have chosen to proceed in this way, I am going to indicate to him that his motion will be denied, and I would suggest that you might want to rethink the degree in which you want to inquire further, because I think it is inappropriate and I am prepared to rule the subject matter that you wish to go into is not relevant here.

MR. SINGER: Your Honor, with respect to that indication, that this is not the Government who is opening the door here, if it should be found that the area of inquiry is appropriate because of the Government's so-called foundation evidence which they elicited on direct examination, then I do feel that it would have been the Government who had opened the door in this line of inquiry.

In addition to that, I don't think a motion for severance with respect to Wong Chou Shek turns directly on whether or not the Government or a co-defendant opens the door. If it is improper for the co-defendant to open

the door, so to speak, then I would be entitled to the same severance, I believe, whether the defendant or the Government.

THE COURT: I would suggest it would become very easy for cases to result in splintering and mistrials merely by the conduct of counsel, and that's why I would suggest most strongly that if the conduct were on the part of the prosecutor, I would be seriously troubled.

Here your co-counsel has chosen to try his case in a certain way, and you have sat silently by, presumably hoping to derive some benefit from his rather extensive cross-examination. It was only the Government which stepped forward in an attempt to stop this.

But I am going to suggest this: At the moment, Mr. Katcher, I have indicated my views. If you want to ask your next question, you can ask it, and as far as the motion made by you, Mr. Singer, for a severance, a severance for mistrial, that motion is in all respects denied.

MR. KATCHER: Your Honor, these two persons, Gin Louie and Lee Louie remain in the indictment in the Eastern District. They are also named in the current indictment.

THE COURT: Fine. But, go ahead and inquire about the transactions that he engaged in with Lee Louie

between 1971 and the date, not going back to 1968 or '69, when you know there is another indictment. I think it isclear on the point of credibility the witness has conceded that over a period of approximately four years he was heavily involved in trafficking in narcotics.

How many times do you want to whitewash the fence, youknow. It's pretty clear If you persist in this, I will rule on each question as it comes, but I do suggest that you are not benefiting your client on the legal issue which you have raised, which I think is in my province. The jury will not be called upon to decide whether or not there had been double jeopardy.

MR. KATCHER: I have discussed this very same situation about prejudicing as to the rights of the other three defendants previously. It has been troubling me. I have an obligation to represent the best interests of my client and to see those interests are adequately --

THE COURT: You have done everything that you could conceivably do, in my judgment, to represent your client, but at this point I don't think you are benefiting him and the point I make is, in that regard, I think that it is working to the detriment of the other defendants.

MR. KATCHER: There has been a great deal of testimony by Wong in the Eastern District Court, and what

your Honor is telling me is to refrain from that because it would be prejudicial to the rights of these people. Of course, the only way I can overcome that, should I decide to change my method of asking qustions, is to give your Honor the entire record of the Eastern District trial to review between now and the conclusion, and let me think about how I can proceed further.

Over the weekend I laid out a schedule based upon what I was going to go into now, O'Grady's reports and everything else from '67 to this very day.

THE COURT: I suggest this: Because I want to protect the other defendants from prejudice, I don't volunteer, but I say to you I am prepared to review the record of the other trial and lay it against this one to see if there is twice jeopardy on the same charges. I have heard your version of it from your motion papers. I have heard the Government. But I don't think it does you any good and, as I say, I think it harms the co-defendants for you to attempt to try the case again.

MR. KATCHER: As I say again, it has been constantly troubling me. If he wasn't in this case, their problems would be so much easier and I say this for the record, for their benefit, which has beer expressed by me on any number of occasions, so I am not pulling any fast

one or speaking in the vernacular.

The use of my -- inadvertenlty of the three indictments was simply a slip and I know better than that.

THE COURT: I suggest that I will do is tell the j jury to disregard the remark about three indictments, to wipe it from their minds, and not to give the matter any further consideration.

MR. KATCHER: That it was a slip of the tongue by Mr. Katcher.

MR. HARTMANN: If your Honor please, on behalf of the defendant Louie I would like to make a motion for severance at this time based upon that specific remark of Mr. Katcher of three indictments being involved. I don't think any cautionary instruction which your Honor may give at this time would eliminate the taint which exists at this time, and I don't know how your Honor would explain away this situation without making it prejudicial to the other defendants.

Do you all request that I refrain from any instruction because you believe that merely to restate the point would do harm? If you all join in the request that I refrain from any instruction I will do so. You have to choose, one way or the other.

MR. HARTMANN: I would like your Honor to make a

statement to that effect, at least on behalf of my client, that he is not involved in any other indictments other than the one on trial.

THE COURT: We have to determine what you gentlemen want.

MR. HARTMANN: That's what I would want on behalf of my client.

THE COURT: I will wait a moment; put your heads together there and join in one request.

Otherwise I will jsut tell the jury to disregard everything. I will wait a moment for you.

(Pause)

(Continued on next page.)

[Pause.]

MR. KEEGAN: On behalf of Leong together with Mr. Hartmann for the defendant Louie we make a motion for a mis-trial and severance that I am sure is denied.

THE COURT: The motions of all three of the co-defendants made by Mr. Singer, Mr. Hartmann and Mr. Keegan for a severance and for a mistrial based on the inadvertent slip of the tongue by Mr. Katcher, those motions are in all respects denied.

Turning from that to the next point, have you gentlemen agreed on instructions which you think that I could reasonably give the jury?

MR. KEEGAN: The three of us agree that we would like a curative instruction that these are the only charges pending against our clients, the three of us, except Mr. Katcher.

MR. KATCHER: That would leave the impression as to Mr. Olsen that there are two other indictments against him and we are only concerned about this indictment period.

MR. KEEGAN: That makes it sound that what we said is not true with respect to the three of us, that there are other charges and other indictments.

MR. KATCHER: That leaves them with the impression that there are other indictments.

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THE COURT: You have a joint request?

MR. KEEGAN: No, we don't. We really don't. We are split 3 to 1 again. We want a charge that these are the only charges pending against our three clients, the only indictment in which they are named and the only thing which the jury should consider.

THE COURT: Off the record.

[Discussion off the record]

[In open court:]

THE COURT: Ladies and gentlemen, a few moments ago just before we had our side bar meeting, you heard reference to three indictments in an inadvertent slip of the tongue by Mr. Katcher. I wish to state to you that the charges contained in the indictment presently on trial are the only charges pending against Mr. Leong, Mr. Louie and Mr. Wong Chou Shek. You ladies and gentlemen here are trying the charges in this indictment in this courtroom based on the evidence you hear here. I direct you not to consider the reference which you heard in any way, shape or form.

At this stage, unless there is anything further which you gentlemen have, I was prepared to excuse the jury. Is that agreeable to everyone?

MR. KAUFMAN: Yes, your Honor.

UNITED STATES OF AMERICA

- v s - 75 Cr. 229

VICTOR LEONG, et al.

September 30, 1975

[10:05 a.m.]

- - -

[Trial resumed.]

MR. KATCHER: Your Honor, may we approach the bench?

THE COURT: Do you prefer to approach the bench for this conference? The jury is not in the courtroom.

MR. KATCHER: No, your Honor. There are two matters I would like to take up. No. 1 relates to the situation about your instructions yesterday in which you eliminated or told the jury to eliminate the three defendants and kept my client out of the elimination instructions. I think that instruction was highly prejudicial to the rights of my client.

THE COURT: Since you introduced the matter at the trial it would seem to the Court it was most appropriate for the Court to protect the other defendants.

MR. KATCHER: I have received a copy of yesterday's transcript of the testimony and there is nothing in this transcript which refers to three indictments.

THE COURT: I heard it. I don't care if it is not in the transcript. I heard the words.

MR. KAUFMAN: At Page 582, your Honor -- it has been omitted from the record, but Mr. Katcher during the side bar conference as transcribed, admits that he said three indictments. I don't think Mr. Katcher can come in here just because it is not in the record and say he didn't say it.

THE COURT: I will have the record amended to reflect what I heard.

Did you say it or didn't you say it?

MR. KATCHER: I can't take a positive stand that I did or I didn't. If I admit it at the side bar I may very well have used the word "three".

THE COURT: What page are you referring to?

MR. KATCHER: Mr. Kaufman says 582.

MR. KAUFMAN: Page 582 at Line 22, your Honor. Mr. Katcher admits his slip of the tongue.

THE COURT: I heard it. No one would have stepped to the side bar had that not been said, and I direct that the record be reviewed by the Court Reporter and corrected if they have omitted something.

MR. KATCHER: If that information had been conveyed to me, your Honor, when I requested a side bar

conference, I would not have requested that, your Honor. However, it was my impression yesterday that there was some reference in my question about three indictments, but looking at the record after it was called to my attention -- I'm not being facetious when I urge this and I hope your Honor will appreciate my position. I'm not being facetious.

THE COURT: Wait just a moment. I recall hearing you state three indictments. Mr. Kaufman recalls it. What about your three co-counsel. They were presumably paying attention, as they always do. Mr. Keegan?

MR. KEEGAN: I heard it.

MR. KATCHER: I will accept that,your Honor.

THE COURT: Mr. Singer?

MR. SINGER: To the best of my knowledge, your Honor, I heard "three."

THE COURT: Mr. Hartmann?

MR. HARTMANN: I did hear three.

MR. KATCHER: Then I withdraw that, your Honor.

Coming back to your instructions yesterday afternoon about keeping away from the other matters contained in the other two indictments in order to establish a continuing conspiracy, although your Honor did say that you would compare the contents of the indictments to see

the overlapping, I would like to direct your Honor's attention to Pages 102 and 103 of the direct testimony in which the door was opened by Mr. Kaufman in establishing dates existing from the participation in the commencement of the narcotic business by the witness Wong in 1967 and ending sometime in the year -- I'm sorry, Page 103 -- commencing in the year of 1967 and at Page 103 continuing [illegible] and including the month of August 1972.

My position at this point in time, your Honor, is that in view of the fact that the door has been opened by the direct answers on direct examination of the witness as to the years that he was involved in the narcotics business, that I would have a right on cross-examination to develop the continued conspiracy by pinpointing the specific dates, areas, times and places without making mention to any particular or specific indictment.

THE COURT: What about that, Mr. Kaufman?

MR. KAUFMAN: Your Honor, on Page 103 I asked Mr. Wong when he first became involved in the business, the narcotic business, and he said 1967. I asked him how long he continued and he said until 1971. I asked him what happened in 1967 and he said some friends in Singapore asked him to bring heroin to San Francisco and he did that himself, and that was the extent of any pre-indictment

information elicited from the witness. The Government did it specifically so we could not be accused of trying to hide the fact that the witness was involved in heroin prior to the charges on trial here. But the Government specifically did not go into the facts of any earlier transactions and I believe it is the obligation of the Government to at least just establish the parameters of the witness' involvement.

The fact that we asked him when he first became involved doesn't mean that Mr. Katcher can then, willy-nilly, go into the details of every transaction he has ever been involved in. That is not on trial here. Mr. Katcher is intent on saying the reason he wants to do this is not to show that the witness is a bad man, not to affect the credibility of the witness, but he keeps on saying it is to establish the continuing conspiracy.

Mr. Katcher's sole point is to make a record for his double jeopardy motion and the Government insists that the issue of double jeopardy is not a matter for the jury and is not something that should be tried before the jury but should be decided by your Honor at the time when this trial is over and you can compare what Ernst Olsen did in this case with what he did in the Eastern District case, and there is no necessity for Mr. Katcher

to establish a record on trial as to what was done in 1967 and in 1968 with what was done in 1971 and 1972, because that is simply not an issue for the jury.

MR. KATCHER: In response to Mr. Kaufman, I certainly disagree with his comment. The fact remains that he did open the door showing the area in which this witness participated in the trafficking of narcotics. While it is true --

THE COURT: He didn't establish anything, the way I read the record, relative to the man being engaged in and involved in a conspiracy and, more specifically, in a conspiracy involving Mr. Olsen, in those earlier years, and that is what you are going to, matters relating to a conspiracy to traffic in narcotics.

He does speak, apparently, of possessing narcotics and transporting them, but there is no indication that he did this in concert with Mr. Olsen, which would make it relevant or even with any other person that we could compare the conspiracies.

MR. KATCHER: Your Honor, I have to, with all due deference to the Court, disagree with your Honor's observation for this reason: That while it is true the motion pending unresolved before your Honor is a law question, nevertheless certain factual patterns have to be established to show the overlapping by certain specific transactions that occurred in the year 1968 when Olsen, according to the information given by the witness to Mr. O'Grady and checked out by Mr. O'Grady and the Government, apparently, which transactions ran to and including the two indictments in the Southern District and the third indictment in the Eastern District, while there is some area of overlapping in two of the indictments, the third indictment certainly does need clarification by obtaining certain answers or responses from the witness to show the continuity of the transactions and the involvement of the witness, together with Olsen, in the continuation of the witness' dealings in narcotics from '68 up to and including 1972 when he stopped his activities. When I say "he," I am referring to the witness Wong.

MR. KAUFMAN: The simple answer to that is any factual issues which have to be resolved in order to decide a legal matter is done outside the presence of the jury, not during the course of the trial.

If Mr. Katcher deems it necessary to take testimony from Wong Shing Kong in order to decide his double jeopardy motion, we can do that when the trial is over, and he can put Wong Shing Kong back on the stand and ask him later on in order to establish whatever he thinks leads to double jeopardy.

It is simply not an issue for the jury.

MR. KATCHER: We are confronted with a situation that your Honor has indicated he would decide the motion, whether the motion should be granted or denied, at the conclusion of the testimony before this Court and jury.

THE COURT: So I can have the record in this case, the facts as the Government has presented them here and as they are developed on the defendants' cases, and compare it to the record in the other case.

I have heard enough, gentlemen. I am going to exercise my discretion under Rule 403 of the federal rules of evidence, which permits a Trial Court to exclude evidence, even if it is relevant, on the grounds of prejudice, confusion or waste of time, and I suggest here, in the context of this case, that the probative value of the evidence you seek to elicit is outweighed by the danger of unfair prejudice to the co-defendants, and that was demonstrated yesterday afternoon, at least in some measure, and the Court

has dealt with that by appropriate instruction, and also is confusing relative to the issues to be decided by this jury.

It can only serve to be misleading because it is not relevant and probative to the issues here on trial, and I would suggest further, having sat through a full day of cross-examination, that if you continue along this line, we will have not only undue delay -- and I have been observing the jury as they listened as you went on and on, hour after hour -- and I suggest also that it would be not only prejudicial in one instance, as indicated, but wasteful of the time of this jury, and would be not calculated to add at all to the defense on these charges. It only goes to your legal issue, a question to be determined by the Court.

In the event you requre, at the end of this case, an additional hearing, I will consider your application at that time. I don't say that I will grant your application, but the record may sufficiently indicate to me that there are separate conspiracies as not to require a hearing.

Accordingly, I suggest that your examination not precede the commencement date of the conspiracy, as alleged in this indictment. You can, if you wish, go two or three or four months prior thereto, if you need something to establish background, but to go back to 1968, 1969 and 1970

would in the Court's opinion be, as I have indicated, unfairly prejudicial to your co-defendants and not helpful to your own cause as far as this trial is concerned.

I have given my reasons. I think this is and would be misleading to the jury. You are really trying an issue of law to the jury and, as I said, it would be wasteful of the time of the jury and not calculated to assist your client's interests at all.

Within the discretion afforded me under Rule 403, I will direct that you desist from inquiring as to transactions prior to the 1st day of January, 1971.

You have your exception.

Bring in the jury.

MR. KATCHER: At this point in time I renew my motion for a severance made at the beginning of the trial, and I also move for the withdrawal of a juror and for a mistrial so far as defendant Olsen is concerned.

THE COURT: Do you want to comment, Mr. Kaufman?

MR. KAUFMAN: Your Honor, I don't think any comment is necessary.

THE COURT: I don't believe so.

When something is of counsel's own making, it seems to me he cannot precipitate his own mistrial. First having called my attention to something that is clearly

erroneous in the record, since I heard, Mr. Kaufman heard it, the three defense counsel who sit at the table heard it, and you did not yesterday, when the matter was fresh, indicate that you had not said it, I deem that you made the statement and, under the circumstances, I daresay that neither the time of this Court or jury should be taken up, or any Court or jury, should be taken up by a mistrial brought on by our own slip of the tongue.

Accordingly, the motion for a severance and, in the alternative, for a mistrial is denied.

MR. KATCHER: Your Honor, I am not basing the motion for mistrial on the question of whether the word "three" was or was not used. I am premising the motion for a mistrial on the fact that I feel a cross-examination as to the periods of time from '68 to '72 to show a continuing course of conduct on the part of the witness, Wong, together with my client, is one continuing conspiracy, and I believe by your Honor's discretion just restricting me to a few months or a short period of time prior to the commencement of the indictment on trial before your Honor and the jury is restricting me in an effort to establish that fact, and it was only on that basis -- really, that basis, and not the preceding situation, that I have asked for the renewal of the motion for severance and not --

THE COURT: Is it that you want to go into each and every prior transaction this witness had with Mr. Olsen in the presence of this jury? Is that what you want to serve your client's cause? If so, do it.

Bring in the jury.

You may inquire as to each and every transaction he had with Mr. Olsen in the prsence of this jury.

MR. KEEGAN: Your Honor, in that case, I move for a severance for my client, Mr. Leong. I don't see how he can get a fair trial if we go over all the prior misconduct between this witness and Mr. Katcher's client.

THE COURT: Do you believe it is inappropriate to do this?

MR. KEEGAN: The point of the double jeopardy motion is that Mr. Olsen should not be put through another trial.

THE COURT: I agree, but Mr. Katcher persists. Perhaps you can talk him out of it. He does his client no good; he does your clients no good.

MR. KEEGAN: Your Honor, if he does have a basis for the motion, it seems to me we should have separate trials, because he is entitled to develop facts which will allow the Court to pass on the double jeopardy motion.

THE COURT: The only way that motion could be

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properly decided is for all the facts to come out here, so he says.

MR. KEEGAN: I agree with him on that -- not here, but he is entitled to a decision on that motion prior to trial, because double jeopardy is to protect --

THE COURT: Do you want me to deny the motion now and then tell him he can make it again?

MR. KEEGAN: I thought it would be better to decide it beforehand, but I am not aware of all that went on between Mr. Katcher and the Court.

THE COURT: Your request is that he desist from this?

MR. KEEGAN: It is for a separate trial, if he goes into it, as he is permitted to do by the Court's ruling.

MR. KATCHER: Rather than prejudice the rights of the other three defendants, and rather than embarrass their attorneys, I will try to curtail it as much as I possibly can without going overboard, to use the vernacular.

THE COURT: Bring in the jury.

(Jury present)

THE COURT: Good morning, ladies and gentlemen. We are starting a little later than I had schedules at the beginning of the trial, but we have been out here for the

Q Did there come a time when you left Vancouver?

A Yes, the next day I left Vancouver.

Q Where did you go?

A I returned to New York.

Q Do you recall about what the day was?

A It is about the 8th or the 9th.

THE COURT: Of what month?

THE WITNESS: December.

THE COURT: The 8th or 9th of December of what year?

THE WITNESS: 1971.

MR. FLANNERY: Your Honor, at this time I would like to have a side bar.

THE COURT: Yes.

MR. FLANNERY: I told you earlier that we would need one in time.

THE COURT: All right.

[At the side bar:]

MR. FLANNERY: Your Honor, sometime earlier in the proceedings we discussed how we would handle testimony concerning the transaction with Wee Sik Moy. I earlier told the Court that the witness has been instructed to discuss threats and not the killing, the possible killing of Jimmy Ding for reneging on a drug transaction. The

witness has been so instructed and understands that as to killing threats he is merely to use the general word threats. But it was your instruction, your Honor,at that time that before we went into that testimony we should have a side bar.

THE COURT: I have been listening to the testimony as it has been going in. It has been moving right along. Is there any real necessity to get into the transaction with Wee Sik Moy? Could it fairly be said that in the context of this case it would be cumulative? Would it be feasible -- you know your case better than anyone -- to pass over this?

MR. FLANNERY: There are several difficulties with that, your Honor. Jimmy Ding, who was a worker for Lam Kin Sang, is involved in but a few transactions, and this is one of those. The Chan brothers were also present and involved in this transaction even if only as intermediaries in this dispute.

Of course it was referred to in the opening. It is the subject of at least one overt act in the indictment.

THE COURT: You've got seventy-odd overt acts and I have been checking them down as you go one by one. If you prove 65, I assure you you will come within the

ambit of the Court's charge. You need prove only a limited number in order to make out a case.

I am concerned with the probative value as compared to the prejudicial effect. I must suggest at this point you have made out, at least in the Court's mind, a prima facie case against three of the defendants, so you need not worry, at least as to those three, about getting to the jury. We haven't heard much about Louie Yiu Che over there and if he came into this picture through this, I would say, yes, I would want you to bring it in, but I dare say that your opponents are not going to capitalize on your leaving out two or three of seventy-odd overt acts and if they do, I do have the last word when I present my charge to the jury and therefore, frankly, I would not want you to inadvertently inject matter into the case with little positive probative value and at the same time the possibility of serious prejudicial effect.

So that if you could shorten it I don't see that any of your opponents are about to capitalize on your omission of this. If anyone would want to make a big production out of it he should best say so at this point, because I would rather leave this out and leave the matter unsaid.

Let me turn to each of defense counsel.

MR. HARTMANN: I would not capitalize upon it

as to my client, Louie Yiu Che, your Honor.

MR. KEEGAN: I agree, your Honor, I won't capitalize on it.

MR. SINGER: With respect to that particular transaction, I have no objection to it being left out, and I would object to its introduction.

THE COURT: You wouldn't make anything out of the fact that it is not being introduced?

MR. SINGER: No.

MR. KATCHER: I agree, as far as my client is concerned.

MR. FLANNERY: To protect the proceedings as to this witness, based upon the responsibility I have, I would like a short recess.

THE COURT: Why don't we take our luncheon recess. I don't think the jury would object nor would counsel.

MR. KATCHER: No.

THE COURT: I think it would shorten the proceedings.

MR. KATCHER: The only comment I would like to make is that Mr. Flannery or anyone else from his office in conversation with the witness should only converse with reference to this particular subject matter and

nothing else.

THE COURT: I see no reason for him to discuss anything else. He is going to tell [illegible] witness that this matter will not be covered, a[illegible]hat he told the witness he planned to cover. If he is going to pass over it and try not to get into it in any way he obviously must speak to him. I depend upon his faith in his communicating with his witness.

The purpose of the conversation is to carefully instruct the witness that he should not volunteer anything on these transactions; that he is not going to cover them and that the Court has indicated that he should not cover them. Therefore, the fact is, Mr. Flannery, that you are passing over them and he, the witness, should not attempt to bring it in as something that you may in his view, at least, have forgotten.

MR. FLANNERY: I explained this to him pursuant to your original direction and while we are on this subject at this time, I don't think counsel should be able to capitalize on me instructing specifically the witness pursuant to a direction of the Court.

THE COURT: No, they are not. They have actually said that they expect, in essence, you to converse with him on the subject so that you can specifically

instruct him not to stumble into the matter inadvertently. That means you must communicate with him and we all rely upon your good faith in communicating with him in the matter that we have discussed, which is basically to eliminate any reference, direct or indirect, to this transaction and through the reference to that transaction to any matters of threats.

MR. FLANNERY: Certainly, your Honor.

MR. KATCHER: I'm certain that the attorneys and their respective defendants certainly are going to avoid that entrapment.

THE COURT: I suggest if they get into that they do so at their own peril.

Is there anything further?

MR. FLANNERY: No, your Honor.

[In open court:]

THE COURT: Ladies and gentlemen, I have conferred with counsel and part of our discussion has had to do with expediting the case and under the circumstances we have all agreed, and I hope you will not find it too unsatisfactory, to take our luncheon recess at this time. It is 25 minutes of one and in order for us to complete certain things I am going to ask the jury to re-assemble ready to proceed at a quarter of two, which is one hour

whose name sounds like Lee Moo?

A Yes.

Q Is that what you told the agents back then?

A Yes, I told him.

Q Do you remember Mr. Singer asking you whether or not it was true that back at that time when you were cooperating you told the agents that Wong Chou Shek was not involved in your narcotics activities?

A Yes, I did not say that he has a part in it.

Q Is there any reason why back then in March of 1972 that you told the agents that Wong Chou Shek was not involved?

A Well, when I was working this heroin business with him, Wong Chou Shek told me if I was arrested he would get me an attorney and also bail me out, and he also said that Ah Lam also will give me $3,000 to $4,000.

Q Did Wong Chou Shek bail you out when you were arrested in December of 1971?

A Yes.

Q When you agreed to cooperate with the agents, why didn't you tell them that Wong Chou Shek was involved in your activities?

MR. SINGER: Objection, your Honor. That has been asked and answered and also it is an operation of his

mind now. I don't think that is relevant.

THE COURT: What about the latter part of it, Mr. Kaufman?

MR. KAUFMAN: It is covered by the Cirillo case as to explanations of prior inconsistencies. I believe we went over this at an earlier time. Here is a memo on it.

[Pause.]

THE COURT: Overruled.

MR. KAUFMAN: Can the Reporter read back the question, your Honor?

THE COURT: Yes.

[Question read.]

MR. SINGER: Asked and answered, your Honor.

THE COURT: Overruled.

A Can I answer that?

THE COURT: Yes.

A I have told you. That if I am arrested and why we were cooperating at one time with this deal -- he told me that if I am arrested that he would get me an attorney and he would bail me out, and that Lam Kin Sang would give me $3,000 to $4,000, and also at that time Wong Chou Shek had some dealings with gangsters and I was afraid that if I spill it out he would have somebody kill

me.

THE COURT: At this time, ladies and gentlemen, I will give you a cautionary instruction. You just heard the last answer of the witness. I permitted this question to be asked and answered and I instruct you that this testimony of the witness is not received for the truth of the matter which was asserted by the witness, but solely on the issue of the witness' credibility.

You will recall that on cross-examination the witness was asked certain questions as to why he did certain things, and that this was relative to his state of mind. I have permitted the Government on redirect to ask the last question and explore the matter which has just been gone into solely on the question of credibility. What the witness may have said to somebody about the matter or someone else may have said to him is not evidence as to the truth of what was said. It is merely offered and should be considered by you as evidence pertaining to the witness' state of mind. It will be up to you and you alone to determine at the conclusion of this trial the credibility of each of the witnesses who appeared before you and the weight that you extend to the testimony given by these witnesses.

MR. KAUFMAN: Thank you, your Honor.

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in the search.

MR. KEEGAN: Your Honor, one other thing.

There was also a question about George Wong on June 10th, George Wong being a San Francisco resident. I am sure that information came from Logan.

THE COURT: The Court is prepared to render a decision.

Defendant Victor Leong moved to suppress certain evidence seized on June 10, 1972 from Victor Leong at the Patricia Hotel in Vancouver, British Columbia, Canada.

The Court finds the following facts:

At approximately 4:10 p.m. on the afternoon of June 10, 1972, Sergeant Harry Wallace, accompanied by two other Canadian officers, used a passkey to enter Room 505 of the Patricia Hotel in Vancouver, British Columbia, Canada. Upon entry into the room, the three officers found Victor Leong in bed. Mr. Leong was advised of his rights under Canadian law and made certain statements. Those statements are not being offered by the Government and, therefore, the Court will not deal with the question of their admissibility.

In addition, the three Canadian officers searched the hotel room and found what has been characterized as "an outfit," including certain material used in connection

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with narcotics, a spoon and an eyedropper, and other materials. These items are not being offered, either, and the Court will not discuss them further.

In addition, Sergeant Wallace seized a notebook, two bank receipts, and a business card, Government's Exhibits 83, 84, 85 and 86 for identification.

The Government justifies the search on the grounds that the Canadian officers had a writ of assistance which was based on information received from Special Constable Chan and which permitted the seizure of both contraband and noncontraband articles. The latter would include the aforementioned exhibits.

The Court finds that sometime bewteen April and June of 1972, the Canadian authorities had communications with Agent Logan of the Drug Enforcement Administration regarding certain narcotics transactions which involved, among other people, Victor Leong.

The Court finds there is no direct evidence that American agents suggested either the June 10, 1972 search or the events which might be called "plan" for that search.

However, in the interim period, between an earlier search on April 24, 1972 and June 10, 1972, it would appear that a big had been installed in a particular hotel

room, that tapes were made, that the tapes are no longer available, the witness Wallace believing that they have been destroyed, but that telephone information was passed to Agent Logan which may well have included some portions at least of overheard conversations.

It would appear to the Court that there was a close working relationship in the period May and June, 1972, between the Canadian authorities and the American authorities, including the exchanges of names, information, and at least one photograph which appears to have been obtained during an earlier search.

The Court finds that the cooperation between agents of the Canadian and American Governments was substantial as to duration, and also was substantial as to the information exchanged back and forth between law enforcement officials of the two governments.

The Court has reached the following conclusions:

Although the search did not take place at the specific direction of the American authorities, the search directly resulted from a joint venture in which agents of the United States Government had a substantial participation.

Accordingly, the defendant's motion to suppress is granted. It is so ordered.

Q At whose end?

A Mr. Lam's end.

Q What did Wong Shing Kong do?

A After one or two days he left for Hong Kong. He went to Tokyo, Tokyo first, and then Hong Kong.

Q The heroin that was delivered to you in March and April, what did you do with that heroin?

MR. SINGER: Your Honor, I am going to object to this whole line of everything that happened in Vancouver at this time as being totally irrelevant to this charge here.

THE COURT: Overruled.

MR. SINGER: I would also move to strike it all as being a separate conspiracy that has nothing to do with this case whatsoever.

THE COURT: Denied.

Q What happened to that heroin?

A Bin Low was in charge of the whole lot; I turned the whole thing over to him.

Q You mentioned a man named Gustaffson who delivered heroin to you.

About when was that?

A In 1972, approximately July and August.

Q Was anyone with Gustaffson?

(Government's Exhibit No. 49 for identification was received in evidence.)

MR. KAUFMAN: Your Honor, if I may refer to the last page?

THE COURT: You may.

(Mr. Kaufman reads to the jury from Government's Exhibit No. 49 in evidence.)

MR. KAUFMAN: Your Honor, the Government rests.

THE COURT: The Government rests.

MR. KATCHER: Your Honor,I would like to offer some exhibits into evidence.

THE COURT: I would think at this stage, if you wish to step to the side bar, motions might be appropriate, if you want to put them on the record. I think it should come at the next stage.

Ladies and gentlemen, the Government has now completed the presentation of its case. I will see counsel at the side bar. I will ask the jury to wait in the box.

(At the side bar)

THE COURT: Gentlemen, at this stage the Government has rested, and I would now hear any motions which counsel care to address to the Court.

MR. KEEGAN: At this time defendant Victor Leong moves for a judgment of acquittal on the basis the

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evidence is insufficient to submit the case to the jury, and the mind of no reasonable juror could conclude guilt beyond a reasonable doubt on the case the Government has presented.

THE COURT: Motion is denied.

MR. HARTMANN: Join in the same motion in connection with the defendant Louie, your Honor.

THE COURT: That motion is also denied.

MR. KATCHER: Defendant Olsen respectfully moves for a judgment of acquittal on his behalf on the ground that the evidence presented on behalf of the prosecution is incredible as a matter of law and shows a consistent dovetailing of testimony based upon repeated consultations by each of the principal Government witnesses, referring to Wong, referring to Lam, referring to Thomsen, referring to this last witness, Charlie Sze, and that the repetitiveness of their testimony is such that one can only conclude it was a well-rehearsed, documented story, because no matter how you attack theid story directly, the challenge was overcome by their steadfast maintenance of the story that they related on direct examination.

Now, on the basis of the entire case, I respectfully move for an order of acquittal.

Your Honor reserved motions for the striking of

testimony, and there has been testimony on the part of certain witnesses which haven't been connected to the alleged conspiracy and to the substantive acts, who were brought in for window-dressing.

I have a note somewheres on my desk as to those witnesses, and I don't believe the Government has connected the testimony of those witnesses taken subject to connection.

THE COURT: Relative to your motion for the judgment of acquittal, the Court believes there has been more than substantial evidence presented against Mr. Olsen to permit the case to go to the jury.

The credibility or incredibility of the testimony of various witnesses is, in the Court's view, a question properly for the jury. Accordingly, the motion for judgment of acquittal is denied.

I do recall that a number of items of evidence were admitted subject to connection, and specifically they include Government's Exhibits 45, 46, 47 and 48, the George Washington Hotel records, which were presented through Mr. Hanfling. In addition, they include Government's Exhibit 51, which was presented through Susan Lee.

In addition, Government's Exhibits 66 and 67, the telephone bills, which were presented through Agent Lowrey Leong, and Government's Exhibits 71 through 74,

which include daily summaries of income and chargeouts from the Kew Motor Inn, and an automobile registration, which was No. 74.

In the Court's view, each of the exhibits which were received subject to connection have been sufficiently connected up so that the Court at this time denies your motion to strike those exhibits which were received subject to connection.

Mr. Singer?

MR. SINGER: Your Honor, on behalf of my defendant I renew the previously made motions for mistrials and those made for severances.

Also, I would move to strike, I believe, the toll records -- there was additional writing thereon which I believe was to be removed --

MR. KAUFMAN: They have been removed, your Honor. I ought to say Mr. Singer should look at them to see that it is to his satisfaction.

MR. SINGER: I would assume that would happen and I didn't think you would use it in argument and actually look at the writings.

THE COURT: When, as and if the jury requests any documents during their deliberations, I will want all counsel present to examine the documents before they

juries should deliberate as long as they feel necessary, or as short a period of time as they feel necessary, but should consider the case as they see it.

Therefore, we will take a ten to fifteen-minute recess at this time. Following that, we will begin with the Government's summation, a somewhat late lunch, and a somewhat late day.

I do appreciate your indulgence. Pleae, although the evidence is in, do not discuss the case among yourselves, keep an open mind on all facets of the case until the case has been completed and given to you following my charge, which should be about noon tomorrow.

The jury is excused for about ten minutes and possibly fifteen minutes.

If counsel would remain, I will hear the appropriate motions and then I will excuse you for approximately ten minutes.

(The jury left the courtroom.)

THE COURT: At this time, gentlemen, I would hear counsel's motions for judgment of acquittal.

MR. KEEGAN: Your Honor, at this time defendant Leong renews his motion for a judgment of acquittal made at the close of the Government's case on the same basis.

THE COURT: The Court denies the motion.

MR. SINGER: Wong Chou Shek, your Honor, also renews the motions previously made for judgment of acquittal.

THE COURT: The motion is in all respects denied.

MR. KATCHER: Defendant Olsen, your Honor, at this time renews his motion at the end of the entire case for a judgment of acquittal.

THE COURT: So far as a judgment of acquittal, the Court will deny that motion.

However, I would note for the record that I have before me the double jeopardy motion and I know that some portions of your offer were calculated for the Court's consideration in that regard; is that right?

MR. KATCHER: That is correct, your Honor.

THE COURT: Since I have not, obviously, had the chance to review the material, so far as the double jeopardy motion is concerned, the Court will continue to reserve decision.

MR. HARTMANN: Defendant Louie moves for a judgment of acquittal, your Honor, at this time, at the end of the entire case.

THE COURT: The defendant Louie's motion is denied.

MR. KAUFMAN: Your Honor, we have a number of additional charts we intend to use in our summation which I think defense counsel will want to look at at this time and say whatever they want to say about them.

THE COURT: Yes, get them out.

MR. SINGER: Also, your Honor, I have a motion to strike one paragraph of the indictment which I had a note on --

THE COURT: What paragraph is that?

MR. SINGER: Paragraph 27 of the indictment.

THE COURT: You mean Overt Act 27?

MR. SINGER: Yes.

THE COURT: Mr. Kaufman, does the Government take any position on that, since you had asked that the Court rad the overt acts to the jury?

MR. KAUFMAN: I don't believe there was any proof of that, so I guess I have no objection to it being stricken.

THE COURT: Very well.

Paragraph 27, that is the overt act denominated 27, is stricken, no objection by the Government.

Anything else, gentlemen, before we turn to the charts?

I suggest the charts be marked for identification

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Francisco relating to the heroin transaction. Similarly, Pon You Wing testified that he saw Leong in San Francisco and Pon You Wing testified that he had no dealings with Victor Leong there either. That testimony is very significant. Keep that in mind in a little while when Mr. Keegan argues to you that Lam is lying about Victor Leong buying heroin from him. When Mr. Keegan argues that to you ask him in your own mind this question: If Lam is going to lie about Victor Leong, why didn't Lam implicate Victor Leong in the San Francisco transaction?

Indeed, if Lam was going to lie about Victor Leong why didn't Lam say he sold Victor Leong five pounds of heroin or ten pounds of heroin instead of a half pound of heroin. If you are going to lie about someone, why not try to make them sound as bad as possible? But Lam didn't do that. Ask Mr. Keegan why.

Now, when Lam saw Leong again in New York Leong gave Lam some more money for that half pound that he had purchased and told Lam that he was going to Vancouver to look for some buyers, and Lam told Leong that when Leong did find some buyers Lam would supply him with some more heroin.

Soon after Pon You Wing made his first trip to New York. Before we review that, let's see what is happening

on that occasion and said that Lam and Lam's girl friend accompanied him back to San Francisco.

Lam says that that happened on Pon's second trip to New York; that the first time he gave Pon only four pounds and Pon returned to San Francisco alone. That is an obvious inconsistency in the testimony which the Government readily concedes, thought it is easily explainable by realizing that either Pon or Lam is simply reversing those first two trips. However, the underlying facts of those trips are still accurate. But it is an inconsistency, nonetheless, the presence of which is interesting because many defense counsel during the cross-examination of the Government witnesses have tried to suggest that The Government supplied names and dates and locations to the witnesses long before they testified in an effort to make sure that the witness' testimony was consistent. If and when any defense counsel argues that to you when they sum up, ask them in your mind why this inconsistency was present in the testimony.

The only answer that logic demands for the existence of the inconsisency and for a few others as well which involve minor discrepancies on dates occurring four years ago, is that the witnesses are giving you their best recollection of events occurring sometime ago and while it

shipment that he had Ernst Olsen bring into New York:

"Q How much heroin did you pack inside the four suitcases?

"A Fifteen units; that is, 22-1/2 pounds."

22-1/2 pounds. That is more than 20-1/2.

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"Q Who did you hear from?

"A Lam Kin Sang.

"Q How did you hear from him?

"A He made a long distance call to me.

"Q What did he say and what did you say?

"A He told me that he already met Mr. Olsen and Mr. Olsen had already given him the fifteen units of heroin"-- 22-1/2 pounds.

I suppose that that was the gaping hole Mr. Keegan was referring to in the Government's case. I suppose tat is the gaping hole, and I suggest that hole has just been filled in.

I also suggest to you that Mr. Keegan never answered the question I posed to him and to you when I first talked to you this morning, and that question was, if Lam Kin Sang is getting on the stand and lying about everything, if he is testifying and trying to implicate Victor Leong in an attempt to get himself out of jail, why

did Lam Kin Sang say he only sold a half-pound of heroin to Victor Leong? Why not the 5 pounds? Why not the 10 pounds? Why did Lam Kin Sang testify Victor Leong had nothing to do with him in San Francisco when they went out there together? If Lam Kin Sang was coming in here to lie about Victor Leong in the hope of getting himself out of jail and put Victor Leong in Jail for something he didn't do, why wouldn't Lam Kin Sang make Victor Leong sound as bad as he could make him? If he is willing to come in here and lie that Victor Leong bought a half-pound from him, there was no constraint on Lam Kin Sang to lie and say Victor Leong bought 5 pounds or 10 pounds.

But Lam Kin Sang didn't do that. He told you Victor Leong bought a half a pound, and Mr. Keegan wants to know why did the Government bring in the fact about the San Francisco trip? Why did the Government bring in the fact that Victor Leong borrowed $200 from I believe, Wong Chou Shek?

Mr. Keegan said we wanted you to know that Victor Leong knew Wong Chou Shek, but, if you recall the testimony, the Government never elicited that on direct. That whole testimony about that $200 loan came out when defense counsel were cross-examining.

Mr. Keegan wants to know why there are no hotel

the names?

THE COURT: I am telling them that it does name 25 people anyway, under the circumstances. That is being covered.

All right, thank you, gentlemen.

[In open court:]

THE COURT: Ladies and gentlemen, it is the custom in this court that the juror seated in Seat No. 1, in this case Mr.Alexander Santa Croce, serve as the Foreman of the jury. Mr. Santa Croce's function will be to take the vote as you vote on the various charges and in the event you request anything he will see to it that a note is prepared specifying your request and is sent to the Court so that the note is received here in the courtroom by me. And I confer with counsel and attempt wherever possible to grant the jury's request, whatever it may be.

Mr. Foreman, ladies and gentlemen, we come now to that stage of the case where the evidence is in, the lawyers have presented their arguments, and you are about to do your part in the administration of justice, which is to pass upon and to decide the factual issues.

You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence. You determine the credibility of the witnesses. You resolve

such conflicts as there may be in the evidence and you draw such reasonable inferences as may be warranted by the testimony or exhibits in the case.

My function at this point is to instruct you to the law which is applicable to the case. It is your duty to accept the law as I state it to you in these instructions, as to imply it to the facts as you find them. The logical result of that application is the verdict in the case.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel, either for the Government or the defendants may have said with respect to matters in evidence during the trial, in questions, in colloquy with the Court, in argument or in summation, is not to be substituted for your own recollection of the evidence.

So, too, anything I may have said during the trial, or may refer to during the course of these instructions as to any factual matter in evidence, is not to be taken in lieu of your own recollection. The case must be decided by you upon the sworn testimony of the witnesses, any stipulations entered into among counsel and such exhibits as were received in evidence.

Should you wish to hear any of the testimony

or any part of my charge, you may request that any portion of the testimony or any portion of my charge be read back to you. You will then be brought back into the courtroom and whatever you have requested will be read to you. Should you wish to see the indictment or any exhibit in evidence, it will be sent into the jury room on your request.

The charges against the four defendants on trial before you, and I will be naming them from time to time in the order their names appear in the indictment -- there is no significance to the order in which I name the defendants -- Victor Leong, Ernst Olsen, Wong Chou Shek and Louie Yiu Che, are contained in the indictment. I instruct you at the outset that the indictment is merely an accusation, a charge. It is no evidence or proof of a defendant's guilt.

Each of the defendants has pleaded not guilty. Therefore, the Government has the burden of proving the charges against each defendant beyond a reasonable doubt. It is a burden that never shifts and remains upon the Government throughout the entire trial. A defendant does not have to prove his innocence. On the contrary, each defendant is presumed to be innocent of the accusations contained in the indictment.

The presumption of innocence was in each defend-

ant's favor at the start of the trial, continued in each defendant's favor throughout the trial and is in each defendant's favor even as I instruct you now. It remains in their favor during the course of your deliberations in the jury room. It is removed only if and when you are satisfied that the Government has sustained the burden of proving the guilt of the particular defendant you are considering beyond a reasonable doubt.

What is a reasonable doubt? It is a doubt based on reason, which arises from the evidence or lack of evidence in the case. It is a doubt that appeals to your reason, to your judgment, your common sense, such as would cause prudent men to hesitate to act in matters of importance to themselves. Reasonable doubt is not caprice, whim or speculation. It is not a doubt that you might conjure up to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. Vague, speculative or imaginary qualms or misgivings are not reasonable doubts. However, a defendant is never to be convicted on mere suspicion or conjecture.

It is not necessary for the Government to establish the guilt of each defendant to a mathematical certainty or beyond all possible doubt. If that were the rule, few people, however guilty they might be, would ever be con-

victed. Thus, the law is such that in a criminal case it is enough to convict if proof is presented that a defendant is guilty beyond a reasonable doubt, not beyond all possible doubt.

The indictment in this case names 25 defendants and contains sixteen counts or charges. Only four of the defendants who are named in the indictment are on trial before you. They are named in the following counts:

Victor Leong is named in Counts 1 and 6. Ernst Olsen is named in Counts 1, 2, 11 and 14. Wong Chou Shek is named in Count 1. Louie Yiu Che is named in Count 1.

Each count charges a separate crime and each defendant on each count must be considered separately by you. I have prepared a form of verdict. I have given copies to each of the attorneys in the case which sets forth the names of the respective defendants in the order they are named in the indictment and the counts on which they are charged. When you come to deliberate you should consider each defendant on each count separately.

The four defendants on trial are the only persons whose guilt or innocence you must announce in your verdict, although, as I will explain to you shortly, in considering their guilt or innocence, you may have to determine the nature of the participation of others. In the determination

of innocence or guilt, you must bear in mind that guilt is personal. The guilt or innocence of each defendant on trial before you must, as I have said, be determined separately with respect to him solely on the evidence presented against him or the lack of evidence.

Let us turn to the specific charges contained in the indictment as they pertain to the four defendants here on trial.

The first count charges a conspiracy. It charges that the defendants, Victor Leong, Ernst Olsen, Wong Chou Shek and Louie Yiu Che, together with other named defendants and co-conspirators, conspired to violate the Federal Narcotics Laws. I shall call this count the conspiracy count. Count 1 reads as follows:

"The Grand Jury charges:

"1. From or or about the 1st day of May, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, ; BING HIN LOW, LI CHI YING, also known as "Robert Li", WONG SHUE TEEN, also known as "Tony Wong", JOHNNY CHAU, PAUL JANG, also known as "Communist Pui", VICTOR LEONG, also known as "Foon Choy Leong", ERNST OLSEN, CONNY ANDRE GUSTAFSSON, STEINER FURU, ERIK MAX HANSEN, JOHN CHRISTIANSEN, ARNE ANDERSEN, BERNARD DALAN, LEE LOUIE, BILL FERN, WONG CHOU

SHEK, also known as "Ah Wong", PON YOU WING, also known as "Ah Fu", GEORGE KAY LEW, also known as "Ah Kay", CHAN CHEUNG, ENG FONG, LAM SHING, WEE SIK MOY, also known as "Ah Siah", PHILIP CHOY TONG, ROLAND CHU and LOUIE YIU/CHE, also known as "Peter Louie", also known as "Louie Gin", the defendants, MA SSU T'SUNG, also known as "Ma", ANAKE YENSOOKSAKUL, TONY MA, also known as "Ah Ming", CHOU CHO CHOI, WONG SHING KONG, SZE CHUN KAM, LAM KIN SANG, JOHN STEFFEN THOMSEN, JIMMY PANG, also known as "Foo", CHAN YUK WO, also known as "Tony Chan", CHAN YUK SHUI, CHOW WAI HING, also known as "Hing Pang", DING SZE YIN, also known as "Jimmy Chan", GEORGE WONG, also known as "Yee Wing Shing", LOW BOK MON, also known as "Norman Low" and NG POY YEE named herein as co-conspirators, but not named as defendants, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1), 841(b)(1)(A), 951(a)(1), 952(a), 953 (a)(1) and 960(a)(1) and 960(b)(1), of Title 21, United States Code.

"2. It was part of said conspiracy that the said defendants and co-conspirators unlawfully, intentionally and knowingly would import into the United States from places outside the United States, to wit, Thailand and Hong Kong, and elsewhere to the Grand Jury unknown, large quantities of

heroin, a Schedule I narcotic drug-controlled substance, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1)(A), 841(b)(1)(A),951(a)(1) 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

"3. It was further part of said conspiracy that the said defendants and co-conspirators unlawfully, intentionally and knowingly would export from the United States to places outside the United States, to wit, Canada, large quantities of heroin, a Schedule I narcotic drug-controlled substance, the exact amount thereof being to the Grand Jury unknown,in violation of Sections 812, 841(a)(1), 841(b)(1)(A), 953(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

"4. It was further part of said conspiracy that the said defendants and co-conspirators unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I narcotic drug-controlled substances,the exact amount thereof being to the Grand Jury unknown, in violation of Section 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code."

"<u>The Defendants and Co-Conspirators</u>*

"<u>The Sources of Supply</u>

"1. Co-conspirators Ma Ssu T'Sung, a/k/a, 'Ma',

Tony Ma, a/k/a 'Ah Ming' and Anake Yensooksakul were suppliers of heroin in and around the city of Bangkok, Thailand.

"The Controller

"2. Co-conspirator Wong Shing Kong established and controlled a heroin distribution network from Bangkok, Thailand, to the United States and Canada.

"The Smugglers

"3. Defendants Ernst Olsen, Conny Andre Gustafsson, Steiner Furu, Erik May Hansen, John Christiansen, Arne Andersen" --

MR. KEEGAN: You made a ruling with respect to this section.

THE COURT: I thought we eliminated the caption.

MR. SINGER: We eliminated the entire thing, your Honor.

THE COURT: We took out the caption.

Let me get the redacted indictment and I will work from it and explain something to the jury.

Ladies and gentlemen, you will consider the paragraphs which I read previously enumerated 1 through 4. Please disregard all the statements which I made after I said the words, "The defendants and co-conspirators." I read from a portion of the indictment that I had eliminated from your consideration and therefore I request that anything

I said in the last moment or two involving certain people after I quoted the words "The defendants and co-conspirators," should be eliminated from your consideration and not be considered by you at all.

When, as and if you request a copy of the indictment, those words which I spoke will not be contained and the sections which I read should be disregarded.

Following Paragraph 4, which I read to you, the Government in the indictment alleges a series of overt acts starting out, "In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere." There then follow a total of what originally were 79 overt acts and we agreed to eliminate one, so there are actually 78 enumerated overt acts which are set forth in the indictment. I will return to the overt acts somewhat later in my charge and rather than read them twice I will note now that I have read a portion of Count 1 but have left for later reading the overt acts alleged by the Government. I will come back to them.

The remaining counts, and now I speak of Counts 2, 6, 11 and 14, are called the substantive counts. Those that pertain to the defendants here on trial are the second count, which charges:

"On or about the 26th day of August, 1971 in the Southern District of New York, Ernst Olsen, the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 5,250 grams of heroin. (Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A)."

The sixth count charges:

"On or about the 16th day of September, 1971 in the Southern District of New York, Victor Leong, a/k/a 'Foon Choy Leong', the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 250 grams of heroin. (Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A)."

The eleventh count charges:

"On or about the 3rd day of December, 1971 in the Southern District of New York, Ernest Olsen, the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 3,500 grams of heroin. (Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A)."

Finally Count 14, which charges:

"On or about the 8th day of March, 1972 in the Southern District of New York, Ernest Olsen, the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 9,450 grams of heroin. (Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A)."

Wong Chou Shek and Louie Yiu Che are not named in any of the substantive counts. I shall discuss the conspiracy count, which I referred to a few moments ago, and the substantive counts, which I have just read to you, separately.

Turning to the conspiracy charge, a conspiracy to commit a crime is an entirely separate and different offense from the substantive crime which is the objective of the conspiracy. The essence of the crime of conspiracy is an agreement or understanding to violate other laws, and an act done to carry out that unlawful agreement.

The Federal Narcotics Law which the defendants are charged with conspiring to violate in the conspiracy count and which Victor Leong and Ernst Olsen are charged with actually having violated in the substantive counts is the Comprehensive Drug Abuse Prevention Act of 1970, which I shall sometimes hereafter refer to as "The Act."

In the Act narcotic drugs, including heroin, are referred to as "Controlled substances." Among other things, the Act makes it unlawful for any person to knowingly or intentionally distribute or possess with intent to distribute heroin, or to import or export heroin to or from the United States.

In order to find any of the defendants guilty under the conspiracy count you must find beyond a reasonable doubt:

First: That at sometime during the period from on or about May 1, 1971 to March 5, 1975, a conspiracy existed as charged in the indictment; that is, in plain language, an agreement existed between at least two of the defendants and co-conspirators to violate those provisions of law which prohibit the importation, exportation, possession and distribution of heroin;

Second: That each defendant knowingly and willfully joined the conspiracy; and,

Third: That at least one of the conspirators committed at least one of the overt acts set forth in the indictment, at or about the time and place alleged.

What is a conspiracy? A conspiracy is a combination, or agreement, of two or more persons to accomplish by concerted action a criminal or unlawful purpose, or some

purpose not in itself criminal or unlawful, by criminal or unlawful means.

The gist of the crime of conspiracy is the unlawful combination or agreement to violate the law. Whether or not the defendants accomplished what it is alleged they conspired to do is immaterial to the question of guilt or innocence.

A conspiracy has sometimes been called a partnership in criminal purpose in which each member becomes the agent of every other member. However, to establish a conspiracy, the Government is not required to show that two or more persons sat around a table and entered into a solemn compact, orally or in writing, stating they have formed a conspiracy to violate the law, setting forth the details of the plan, the means by which the unlawful project is to be carried out, or the part to be played by each conspirator. Indeed, it would be extraordinary if there were such a formal document, or specific oral agreement.

Your common sense will tell you that when people in fact undertake to enter into a criminal conspiracy, much is left to unexpressed understanding. Conspirators do not usually reduce their agreements to writing or acknowledge them before a notary public, nor do they publicly broadcast their plan.

Thus, it is sufficient if two or more persons, in any manner, through any contrivance, impliedly or tacitly, come to a common understanding to violate the law. Express language or specific words are not required to indicate assent or attachment to a conspiracy.

In this connection, it is not necessary for the Government to prove the success of the conspiracy in order to establish a violation of the conspiracy statute. As a conspiracy is basically an agreement to violate the law, it may exist even though the final objectives were never accomplished, although in this case the Government alleges that a number of the objectives of the conspiracy were successfully realized.

In determining whether there has been an unlawful agreement, you may judge the acts and conduct of the alleged members of the conspiracy which are done to carry out an apparent criminal purpose. Usually, the only evidence available is that of disconnected acts on the part of the alleged individual conspirators, which acts, however, when taken together in connection with each other and with the reasonable inferences drawn therefrom, show a conspiracy or agreement to secure a particular result as satisfactorily and conclusively as more direct proof.

If upon such consideration of all the evidence,

you find beyond a reasonable doubt that the minds of the alleged conspirators met in an understanding way and that they agreed, as I have explained a conspiratorial agreement to you, to work together in furtherance of the unlawful scheme alleged in the indictment -- in other words, to attain the objectives of a conspiracy -- then proof of the existence of the conspiracy is established.

In Count 1 the defendants are charged with a conspiracy to violate the Federal Narcotics Laws by agreeing to import heroin to, and export heroin from, the United States, and to possess the heroin with the intent to distribute it in the United States. In order to find the defendants guilty of the conspiracy charged in Count 1 of the indictment, you must find that the violations of the Federal Narcotics Laws, as I have just described them to you, were objectives of the conspiracy.

Specifically, the Government claims that the overall objectives of the conspiracy were to import large quantities of heroin from Thailand into the United States and then distribute that heroin from a number of main distribution points, including New York City, San Francisco and Vancouver, British Columbia.

Once satisfied that the conspiracy charged existed, you must ask yourself who its members were. In deciding

whether each defendant on trial before you was a member of the conspiracy you should consider whether on all the evidence that defendant knowingly and purposely entered the conspiracy.

In determining whether each defendant became a member of the conspiracy, you must determine not only whether he participated in it but whether he did so with knowledge of its unlawful purpose. Did he join with awareness of at least some of the basic aims and purposes of the conspiracy? For example, the Government acknowledges that Louie Yiu Che did not take any active role in actually importing the heroin, but alleges that he purchased some of the heroin that was imported. If you find that he purchased some of the imported heroin on a number of occasions from other members of this conspiracy, then you may find that he was aware of the distribution part of the conspiracy, which would make him a participant in the conspiracy.

Knowledge is a matter of inference from facts proved. It is not necessary, though, that a defendant be fully informed as to the details of the scope of the conspiracy in order to justify any inference of knowledge on his part. To have guilty knowledge, the defendant need not know the full extent of the conspiracy and all of its activities and actors.

I want to caution you that mere association with one or more of the conspirators does not make one a member of the conspiracy. Nor is knowledge without participation sufficient. What is necessary is that a defendant participate with knowledge of at least some of the purposes of the conspiracy and with intent to aid in the accomplishment of those unlawful ends.

Also, it is not required that a person be a member of the conspiracy from its very start. He may join it at any point during its progress and be held responsible for all that has gone on before he joined and all that may be done thereafter, so long as he remains a member of the conspiracy. Simply stated, and using the partnership analogy again, by becoming a partner in the criminal enterprise he assumes all the liabilities of the partnership including those that occurred before he became a member.

All of the conspirators need not be acquainted with all the other members of the conspiracy. They may not have previously associated together. One of the defendants may know only one other member of the conspiracy, but if he enters into an unlawful agreement with that other member of the conspiracy, he becomes a party thereto. To use Louie Yiu Che as an example again, the Government contends that Louie Yiu Che received his heroin from other defendants

and alleged co-conspirators. The Government concedes that he was not acquainted with many of the other co-conspirators such as Ma Ssu T'Sung, the supplier in Thailand. Should you find that he entered into an unlawful agreement to obtain heroin from other defendants and alleged co-conspirators, then he is a member of the overall conspiracy.

Once a person is found to be a member of the conspiracy, he is presumed to continue his membership until its termination, unless there is affirmative proof offered of withdrawal or disassociation.

If it appears from the evidence beyond a reasonable doubt that the conspiracy alleged in the indictment was knowingly and wilfully formed and that the defendant you are considering knowingly and wilfully became a member of the conspiracy with knowledge of at least some of its unlawful purposes as charged, then you must consider whether the Government has established beyond a reasonable doubt the third element of the crime; that is whether at least one of the other acts as charged in the indictment was committed by at least one of the co-conspirators in furtherance of the objectives of the conspiracy.

The reason the law of conspiracy requires an overt act is because a person might agree to commit a crime against the United States and then change his mind.

In such as case there is no crime.

Before there can be crime, one or more of the conspirators must have taken one step or performed at least one single act which moved directly toward carrying out the unlawful intent to commit the crime. The overt act need not be a criminal or an unlawful act in and of itself, but it must be an act done to effect the object of the conspiracy to violate the law.

The Government has alleged 78 overt acts. It must prove to you beyond a reasonable doubt only that one of the overt acts was committed by one or more of the conspirators in the Southern District of New York. In that regard, I instruct you that the Borough of Manhattan is in the Southern District of New York. One overt act in this District by any member of the conspiracy is sufficient.

"Overt act" means an act committed or caused to be committed by any member of the conspiracy in an effort to accomplish some object or purpose of the conspiracy.

I will now read you the overt acts charged in the indictment.

"OVERT ACTS

"In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

"1. On or about June 1, 1971, at the Rusami Jewelry Store, Bangkok, Thailand, Ma Ssu T'Sung, a/k/a "ma' agreed to supply Wong Shing Kong with large quantities of heroin to be distributed in the United States.

"2. On or about June 4, 1971, Ernst Olsen met Wong Shing Kong in Bangkok, Thailand, and agreed to transport heroin from Bangkok, Thailand to the United States.

"3. On or about June 6, 1971, in Bangkok, Thailand, Anake Yensoosakul attempted to place 10,500 grams of heroin and 105 pounds of opium on board the M.S. Clifford Maersk.

"4. On or about June 6, 1971, in Bangkok, Thailand, Wong Shing Kong received 10,500 grams of heroin and 105 pounds of opium from Ma Ssu T'Sung, a/k/a 'Ma' and Anake Yensoosakul.

"5. On or about June 9, 1971, Wong Shing Kong flew from Bangkok, Thailand to Hong Kong.

"6. On or about June 14, 1971, Ernst Olsen arrived in Tokyo, Japan.

"7. On or about August 14, 1971, Wong Shing Kong had a conversation with Ma Ssu T'Sung, a/k/a 'Ma' in Hong Kong.

"8. On or about August 16, 1971, Ernst Olsen visited the United States Consulate in Hong Kong.

"9. On or about August 26, 1971, Tony Ma, a/k/a 'Ah Ming', drove Wong Shing Kong, Ernst Olsen and four suitcases containing approximately 10,500 grams of heroin to the airport in Bangkok, Thailand.

"10. On or about August 26, 1971, Ernst Olsen, carrying approximately 5,250 grams of heroin, contained in two suitcases, registered at the George Washington Hotel, 23rd Street and Lexington Avenue, New York, New York.

"11. On or about August 27, 1971, Ernst Olsen delivered approximately 5,250 grams of heroin to Lam Kin Sang at the George Washington Hotel, 23rd Street and Lexington Avenue, New York, New York.

"12. On or about August 27, 1971, Lam Kin Sang purchased a scale at the 5 & 10 Cents Store on Bowery Street, New York, New York.

"13. On or about August 28, 1971, Lam Kin Sang delivered approximately 500 grams of heroin to Lee Louie in the "1 Club at 1 East Broadway, New York, New York.

"14. On or about September 3, 1971, Ernst Olsen checked out of the George Washington Hotel, 23rd Street and Lexington Avenue, New York, New York.

"15. On or about September 5, 1971, Wong Shing Kong rented a house on Soi Papanit (Street), Bangkok, Thailand.

"16. On or about September 6, 1971, Lam Kin Sang delivered approximately 500 grams of heroin to Lee Louie in the #1 Club at 1 East Broadway, New York, New York.

"17. During the week of September 12, 1971, Lam Kin Sang delivered approximately 500 grams of heroin to Lee Louie in the #1 Club at 1 East Broadway, New York, New York.

"18. On or about September 10, 1971, Low Bok Mon, a/k/a/ 'Norman Low' received approximately 1,000 grams of heroin from Lee Louie and delivered it to Bill Fern in New York, New York.

"19. On or about September 10, 1971, Bill Fern arrived in Chicago, Illinois.

"20. On or about September 16, 1971 Victor Leong, a/k/a/ 'Foon Choy Leong' registered at the George Washington Hotel, 23rd Street and Lexington Avenue, New York, New York, and thereafter received approximately 250 grams of heroin from Lam Kin Sang at the Gung On Association Gambling House, in New York, New York.

"21. On or about October 2, 1971, in Bangkok, Thailand, Wong Shing Kong, Conny Andre Gustafsson and Ernst Olsen delivered approximately 7,000 grams of heroin and 105 pounds of opium to Steiner Furu on board the M. S. Thomas Maersk, which sailed for the United States on

October 3, 1971.

"22. In or about early October, 1971, Lam Kin Sang, in possession of approximately 2,000 grams of heroin, registered at the Holiday Inn at 750 Kearney Street, San Francisco, California.

"23. In or about early October, 1971, Lam Kin Sang went to the Dai Loy Gambling House, 614B Jackson Street, San Francisco, California, where he had a conversation with Wong Chou Shek, a/k/a 'Ah Wong', Pon You Wing, a/k/a 'Ah Fu' and George Kay Lew, a/k/a 'Ah Kay'.

"24. In or about early October, 1971, Lam Kin Sang delivered approximately 1,000 grams of heroin to George Kay Lew, a/k/a 'Ah Kay' at the Holiday Inn at 750 Kearney Street, San Francisco, California.

"25. In or about early October 1971, Lam Kin Sang delivered approximately 1,000 grams of heroin to Pon You Wing, a/k/a 'Ah Fu' at the Holiday Inn at 750 Kearney Street, San Francisco, California.

"26. From in or about mid-October, 1971 to in or about mid-November, 1971 Wong Chow Shek sold approximately 2,500 grams of heroin to Louie Yiu Che, a/k/a 'Peter Louie', a/k/a 'Louie Gin' in San Francisco, California."

I intentionally omit alleged overt act No. 27.

"28. From in or about mid-October, 1971 Lam Kin

Sang delivered approximately 500 grams of heroin to Lam Shing in New York, New York.

"29. In or about mid-October, 1971, Tony Ma, a/k/a 'Ah Ming' delivered approximately 4,200 grams of his own heroin and approximately 9,800 grams of heroin belonging to Ma Ssu T'Sung, a/k/a 'Ma' to Wong Shing Kong at Soi Papanit (Street), Bangkok, Thailand.

"30. On or about October 23, 1971, in Bangkok, Thailand, John Christiansen received approximately 7,000 grams of heroin and thereafter departed Bangkok, Thailand on board the M.S. Trein Maersk for the United States.

"31. On or about October 23, 1971, in Bangkok, Thailand, John Steffen Thomsen received approximately 9,450 grams of heroin and thereafter departed Bangkok, Thailand on board the M. S. Luna Maersk for the United States.

"32. On or about November 8, 1971, in Bangkok, Thailand, Erik Max Hansen received approximately 8,400 grams of heroin and thereafter departed Bangkok, Thailand on board the M. S. Lica Maersk for the United States.

"33. On or about November 12, 1971 Victor Leong, a/k/a 'Foon Choy Leong' registered at the George Washington Hotel on 23rd Street and Lexington Avenue, New York, New York.

"34. On or about November 14, 1971, Ernst Olsen

arrived in the United States on board Japan Airlines, Flight #002.

"35. On or about November 18, 1971, in Vancouver, Canada, Wong Shing Kong was introduced to Bing Hin Low by Li Chi Ying, a/k/a 'Robert Li.'

"36. On or about November 18, 1971, in Vancouver, Canada, Bing Hin Low told Wong Shing Kong that he wanted 2,500 grams of heroin immediately, 5,000 additional grams of heroin before Christmas, 1971, and 5,000 grams of heroin per month thereafter.

"37. In or about late November, 1971, Lam Kin Sang delivered approximately 500 grams of heroin to Eng Fong at the Tung On Association in New York, New York.

"38. On or about November 29, 1971, Steiner Furu and Conny Andre Gustafsson arrived in New York on board the M.S. Thomas Maersk and delivered 7,000 grams of heroin to Ernst Olsen, who, in turn, delivered it to Wong Shing Kong.

"39. In or about early December, 1971, Wong Chou Shek, a/k/a 'Ah Wong' telephoned Lam Kin Sang and advised him that Pon You Wing, a/k/a 'Ah Fu' would come to New York to pick up an unspecified quantity of heroin.

"40. In or about early December 1971, Pon You Wing, a/k/a 'Ah Fu' received approximately 2,000 grams of heroin from Lam Kin Sang at the Kew Motor Inn, Queens, New

York.

"41. On or about December 3, 1971, Ernst Olsen met Johnny Chau in Toronto, Canada and thereafter flew to Vancouver, Canada to deliver approximately 3,500 grams of heroin to Li Chi Ying, a/k/a 'Robert Li.'

"42. On or about December 7, 1971, in Vancouver, Canada, Wong Shing Kong met with Li Chi Ying, a/k/a 'Robert Li', Johnny Chau, Bing Hin Low and Wong Shue Teen, a/k/a 'Tony Wong.'

"43. On or about December 8, 1971, Lam Kin Sang arrived in Vancouver, Canada, where he met Victor Leong, a/k/a 'Foon Choy Leong' and Paul Jang, a/k/a 'Communist 'Pui.'

"44. On or about December 8, 1971, in Vancouver, Canada, Wong Shing Kong and Li Chi Ying, a/k/a/ 'Robert Li' delivered approximately 2,500 grams of heroin to Bing Hin Low.

"45. On or about December 9, 1971, in Vancouver, Canada, Paul Jang, a/k/a 'Communist Pui' purchased approximately 1,500 grams of heroin from Lam Kin Sang.

"46. On or about December 15, 1971, in San Francisco, California, Wong Chou Shek, a/k/a 'Ah Wong' and Pon You Wing, a/k/a/ 'Ah Fu' possessed approximately 500 grams of heroin with intent to distribute.

"47. On or about December 19, 1971, Wong Shing Kong had a telephone conversation with Wong Chou Shek, a/k/a 'Ah Wong'.

"48. On or about December 21, 1971, Wong Shing Kong and Ernest Olsen left the United States.

"49. On or about December 24, 1971, in Bangkok, Thailand, Wong Shing Kong delivered a sum of money to Ma Ssu T'Sung, a/k/a 'Ma.'

"50. On or about December 25, 1971, John Steffen Thomsen, in possession of approximately 9,450 grams of heroin, arrived in New York on board the M. S. Luna Maersk.

"51. In or about late December, 1971, Wee Sik Moy, a/k/a 'Ah Siah' possessed approximately 500 grams of heroin with intent to distribute.

"52. In or about the last of December, 1971 Ernst Olsen flew to Vancouver, Canada.

"53. On or about January 2, 1972, Arne Andersen arrived in Vancouver, Canada and delivered approximately 7,250 grams of heroin to Ernst Olsen and Li Chi Ying, a/k/a 'Robert Li'.

"54. On or about January 6, 1972, Erik Hansen, in possession of approximately 8,400 grams of heroin, arrived in New York on board the M.S. Lica Maersk.

"55. In or about the first week of January, 1972, Tony Ma, a/k/a 'Ah Ming' delivered approximately 7,000 grams of heroin to Wong Shing Kong in Bangkok, Thailand.

"56. On or about January 12, 1972, in Vancouver, Canada, Arne Anderson delivered approximately 7,000 grams of heroin to Ernst Olsen and Li Chi Ying, a/k/a 'Robert Li'.

"57. On or about January 14, 1972, Ernst Olsen and Arne Andersen arrived in Japan.

"58. On or about January 30, 1972, in Bangkok, Thailand, Bing Hin Low had a conversation with Ma Ssu T'Sung, a/k/a 'Ma'.

"59. On or about February 2, 1972, in Hong Kong, Bing Hin Low had a conversation with Sze Chun Kam.

"60. On or about February 12, 1972, Sze Chun Kam arrived in Vancouver, Canada.

"61. From on or about February 12, 1972, through August 2, 1972, Sze Chun Kam sold heroin in pound and multi-pound quantities, on a weekly basis, to Bing Hin Low.

"62. On or about February 18, 1972, Lam Kin Sang leased an apartment at 60 East Broadway, New York, New York.

"63. On or about March 1, 1972, Steiner Furu arrived in Vancouver, Canada and delivered approximately 7,250 grams of heroin to Sze Chun Kam.

"64. On or about March 8, 1972, Ernst Olsen and Lam Kin Sang delivered approximately 9,450 grams of heroin to an apartment at 60 East Broadway, New York, New York.

"65. On or about March 13, 1972, in Hong Kong, John Steffen Thomsen received approximately 8,400 grams of heroin from Steiner Furu and Wong Shing Kong.

"66. On or about March 14, 1972, Arne Andersen delivered approximately 7,250 grams of heroin to Sze Chun Kam in Vancouver, Canada.

"67. In or about the latter part of March, 1971, in Bangkok, Thailand, Wong Shing Kong received approximately 52,500 grams of heroin from Ma Ssu T'Sung, a/k/a 'Ma', Tony Ma, a/k/a 'Ah Ming' and Chou Cho Choi.

"68. On or about March 21, 1972, Steiner Furu delivered approximately 7,250 grams of heroin to Sze Chun Kam in Vancouver, Canada.

"69. In or about the latter part of March, 1972, Lam Kin Sang delivered approximately 500 grams of heroin to Chan Cheung in New York, New York.

"70. In or about the latter part of March, 1972, Lam Kin Sang delivered approximately 250 grams of heroin to Chan Cheung in New York, New York.

"71. On or about April 4, 1972, in New York,

New York, Jimmy Pang, a/k/a 'Foo' sold approximately 444 grams of heroin to an undercover agent of the Bureau of Narcotics and Dangerous Drugs.

"72. On or about April 7, 1972 Bernard Dalan arrived in Vancouver, Canada and delivered approximately 7,250 grams of heroin to Wong Shing Kong and Sze Chun Kam.

"73. On or about April 11, 1972, in New York, New York, Jimmy Pang, a/k/a 'Foo', Chow Wai Hing, a/k/a 'Hing Pang', Ding Sze Yin, a/k/a 'Jimmy Chan', Chan Yuk Wo, a/k/a 'Tony Chan' and Chan Yuk Shui possesses approximately 2,017 grams of heroin with intent to distribute.

"74. On or about April 12, 1972, in New York, New York Lam Kin Sang, Chan Yuk Wo, a/k/a 'Tony Chan' and Chan Yuk Shui possessed approximately 2,617 grams of heroin with intent to distribute.

"75. On or about April 15, 1972, Wong Shing Kong and Bing Hin Low arrived in Hong Kong and met Wong Shue Teen, a/k/a 'Tony Wong'.

"76. On or about April 19, 1972, John Steffen Thomsen arrived in New York with approximately 8,400 grams of heroin on board the M.S. Luna Maersk.

"77. On or about July 19, 1972, Conny Andre Gustafsson delivered approximately 7,250 grams of heroin to Ernst Olsen in Montreal, Canada.

"78. On or about December 24, 1972, John Steffen Thomsen possessed approximately 8,400 grams of heroin in Brooklyn, New York with intent to distribute.

"[Title 21, United States Code, Section 846 and 963.]"

If you find that a conspiracy existed, it is not essential that the Government prove it began or ended on the specific dates set forth in the indictment. Indeed, in the present case the Government's proof, as I recall it, ended in December of 1972. Of course, it is your recollection which governs.

It is sufficient if you find that in fact a conspiracy was formed and existed for some substantial time within the period set forth within the indictment and that at least one of the overt acts was committed in furtherance of the conspiracy within that period.

As I have told you, when people enter into a conspiracy to accomplish an unlawful purpose, they become agents for one another in carrying out the conspiracy. Hence, the acts or declarations of one in the course of the conspiracy and in furtherance of the common purpose are deemed to be the acts of all, and all are responsible for such acts.

Accordingly, if you are satisfied that a con-

spiracy existed, then the acts, statements and declarations made in furtherance of the conspiracy by any person during its pendency are considered the acts, statements and declarations of all other members even though they were not present when made and even though such acts or statements or declarations may have taken place and been made prior to a member's entry into the conspiracy, and even though such acts and statements and declarations were made in his absence and without his knowledge. In other words, every co-conspirator is fully responsible for what every other co-conspirator does in furtherance of the conspiracy, whether he knows about it or not and whether he specifically approved of it or not.

It is important to note that this principle applies only to acts and declarations done or made during the continuance of the conspiracy and in furtherance thereof, that is, to carry out an unlawful objective or purpose of the conspiracy. It does not apply to acts or declarations which do not have these characteristics.

In sum, on the conspiracy count, in order to convict the defendant whose guilt or innocence you are considering you must find:

(1). The existence of a conspiracy which had as its objective the unlawful purpose charged, and,

(2). A knowing participation in that conspiracy by the particular defendant you are considering; and

(3). The occurrence of any overt act in the Southern District of New York, whether performed by that defendant or one of his co-conspirators.

The defendants contend here that the Government has failed to prove a conspiracy. Alternatively, they contend that at best the Government has proved separate conspiracies involving various of the defendants. Proof of several separate and independent conspiracies is not proof of the single, overall conspiracy as charged in the indictment, and if you find that the Government has failed to prove the existence of only one conspiracy, you must find the defendants not guilty.

In determining whether there was a single, overall conspiracy, you may consider what the evidence shows as to charges of personnel and activity. You may find a single conspiracy, even though there were changes in personnel and activity, provided you find that some of the conspirators continued throughout the length of the conspiracy and that the purposes of the conspiracy continued to be those charged.

The fact that the parties are not always identical doesn't mean that there are separate conspiracies. In other words, if at all times the alleged conspiracy had

the same overall primary purpose and the same nucleus of participants, the conspiracy would be the same basic scheme, even though in the course of its operation additional conspirators joined in and performed additional functions to carry out the scheme while others were not active or had terminated their relationship.

On the other hand, if you find that one overall conspiracy terminated and another was formed, you may not find a single conspiracy even though the purposes of both conspiracies were the same and that some of the defendants were members of both.

In essence, the question is, what is the nature of the agreement? That is for you to determine after examining all the evidence.

Turning now to the substantive counts, as I pointed out earlier, the defendant Victor Leong is named in Count 6; the defendant Ernst Olsen is named in Counts 2, 11 and 14. Wong Chou Shek and Louie Yiu Che are not named in any substantive counts.

The statute which Victor Leong and Ernst Olsen are alleged to have violated in Counts 2, 6, 11 and 14 is Section 841 of Title 21, United States Code. That section reads, in pertinent part, as follows:

"...it shall be unlawful for any person knowingly

or intentionally to...distribute or...possess with intent to...distribute...a controlled substance..."

In order to find Leong or Olsen guilty of the crimes charged in the counts in which they are named, you must be convinced beyond a reasonable doubt:

First, that on or about the dates set forth in each count, in the Southern District of New York, the defendant charged in that count possessed with intent to distribute a narcotic drug controlled substance;

Second, that he did so unlawfully, wilfully and knowingly; and

Third, that the substance he so possessed was in fact a narcotic drug controlled substance. Specifically, we are talking about heroin.

As to the first element, "Possession with intent to distribute," the word possession has its common, everyday meaning, that is to have something in your control.

With respect to the first element of the substantive charge, in addition to finding possession, you must find beyond a reasonable doubt that at the time of possession the defendant you are considering, whether it be Mr. Leong or Mr. Olsen, had the intent in his mind to distribute the heroin. The term distribute is defined in the law to mean to deliver a substance. The Government

contends, and you may find, that as a matter of common sense heroin in such large quantities as has been testified to in this case was for delivery or distribution and not for the personal use of the defendant.

On this element, the Government further contends that it has proved beyond a reasonable doubt that the defendants knowingly transferred the drug. The Government relies on the evidence adduced that certain of the defendants transferred heroin to or from witnesses who have testified in this trial.

If you find beyond a reasonable doubt that such transfers were made, I charge you that each such transfer satisfied the distribution requirement of the statute.

As to the second element, the terms "unlawfully, wilfully and knowingly" mean that you must be satisfied beyond a reasonable doubt that the defendants knew what they were doing and that they did it deliberately and voluntarily as opposed to mistakenly or accidentally or as a result of some coercion. Of course, it is not necessary that the defendants knew they were violating any particular law. Rather, it is sufficient if you are convinced beyond a reasonable doubt that they were aware of the general unlawful nature of their acts.

Knowledge and intent exist in the mind. Since

it is not possible to look into a man's mind to see what went on, the only way you have for arriving at a decision on these questions is for you to take into consideration all of the facts and circumstances, and determine whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

Counts 2, 6, 11 and 14 charge that the narcotic drug controlled substance was heroin. I instruct you as a matter of law that heroin is a narcotic drug controlled substance. However, you must still find beyond a reasonable doubt that the substance in question was heroin.

The Government did not produce with respect to Counts 2, 6, 11 and 14 the heroin allegedly possessed and transferred. Just as with any other element of the crime, the existence of the heroin may be proved by what we call circumstantial evidence. There need be no sample placed before the jury, nor need there be testimony by chemists as long as the evidence furnishes a basis for inferring that the material in question was heroin. The Government relies on the testimony of Wong Shing Kong, Lam Kin Fang, Jimmy Ding, John Thomsen and Sze Chun Kam, among others, who participated in these transactions. Thus, the Government

offers circumstantial proof -- the secrecy with which the transactions were handled, the fact that the substance in which they were dealing was a white, powdered, substance, the high prices paid for the substance and the lack of complaint on the part of the purchasers -- to establish that the materials in question were narcotic drugs, specifically heroin.

The Government did offer, however, a number of pounds of heroin which had been seized from John Thomsen in the specially made suitcases in December, 1972, and since it all came from the same source, the Government contends that the substances that Victor Leong and Ernst Olsen are charged with actually possessing were indeed heroin.

How do you determine the truth and how do you appraise the credibility of the witnesses? You use your own plain, everyday common sense. You have seen the witnesses. You have observed the manner of their testifying, and whatever credit you may give their testimony must be determined by their conduct and their manner of testifying and their relationship or interest in the outcome. In other words, you apply your common sense and everyday experience. You may, of course, take into consideration the interest of a witness. An interested witness is not necessarily unworthy of belief. It is a factor, however, which you may consider

in determining the weight and credibility to be given to his testimony.

If any witness has wilfully testified falsely to any material fact, you may disregard all his testimony or accept such part of it as you deem worthy of belief or as it appeals to your reason or judgment.

A witness may be discredited or impeached by contradictory testimony, or by evidence that at other times the witness has made statements which are inconsistent with his present testimony. If you believe that any witness has been impeached and thus discredited, it is your exclusive province to accept the testimony of that witness or reject the testimony of that witness or to give the testimony of that witness whatever weight you think it deserves.

The Government called Wong Shing Kong, Lam Kin Sang, Sze Chun Kam, John Thomsen and Pon You Wing, among others, as witnesses at the trial. By their own testimony each was an accomplice in the crimes charged against the four defendants here on trial.

In the prosecution of crime, the Government is frequently called upon to use witnesses who are accomplices. It must use such testimony because otherwise it would be difficult or impossible to detect or prosecute wrong doers. This is particularly so in cases of conspiracy. Frequently

it happens that only the members of the conspiracy have evidence which is relevant to and important in a case. There is no requirement in a Federal Court that the testimony of an accomplice be corroborated. That is supported by other evidence. In the Federal Courts, a conviction may rest upon the uncorroborated testimony of an accomplice, if you believe it and find it credible. It should be pointed out, however, that here the Government does claim that it has offered substantial independent proof and corroboration from other witnesses.

The fact that a witness is an accomplice should be considered by you as bearing upon his credibility. However, it does not follow that because a person has acknowledged participation in the crime charged against a defendant, he is not capable of giving a truthful version of what happened. His testimony, however, should be viewed with caution and scrutinized carefully. Ask yourselves the question, was the witness' testimony inspired by any motive of reward, of self-interest, bias or prejudice or hostility to the defendants so that he gave false or colored testimony against them? If you find that it was, you may reject it.

I further instruct you that the testimony of a person who admitted prior false testimony should be

considered with caution and weighed with great care. However, if after a cautious and careful examination of a witness' testimony and his demeanor upon the witness stand you are satisfied that he told the truth as to certain events, you may accept it as credible and act upon it accordingly.

You may not draw any inference, favorable or unfavorable, towards the Government or the defendants on trial from the fact that certain persons were not named as defendants and are not on trial before you now. Those matters are wholly outside your concern and have no bearing on your function as jurors.

Evidence that a witness has been convicted in the past of certain crimes may be considered by you in determining that witness' credibility. By this I mean you may consider the prior convictions in determining that witness' worthiness of belief.

The law does not compel a defendant in a criminal case to take the witness stand to testify, and no presumption of guilt may be raised and no inference of any kind may be drawn from the failure of a defendant to testify.

Where a defendant has offered evidence of good general reputation for truth and veracity, honesty and integrity, or as a law abiding citizen, the jury should consider such evidence along with all the other evidence in

the case.

Evidence of a defendant's reputation inconsistent and veracity, or honesty and integrity, or as a law abiding citizen, has not been discussed; or that those traits of the defendant's character have not been questioned, may be sufficient to warrant an inference of good reputation as to those traits of character.

Evidence of a defendant's reputation, inconsistent with those traits of character ordinarily involved in the commission of the crime charged may give rise to a reasonable doubt, since the jury may think it improbable that a person with good character with respect to those traits would not commit such a crime.

You will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The burden is upon the Government to prove each and every charge against each defendant beyond a reasonable doubt.

You may have heard me refer to direct evidence and circumstantial evidence and it is well to explain now the difference between these two types of evidence.

Direct evidence is where a witness testifies to what he saw occur or observed, what he knows of his own knowledge, something which comes to him by virtue of his

own senses.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind. Stated somewhat differently, circumstantial evidence is that evidence which tends to prove a disputed fact by proof of other facts which may have a logical tendency to lead the mind to a conclusion that those facts exist which are sought to be established.

Circumstantial evidence, if believed, is of no less value than direct evidence, for in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant.

Let us take one simple example, one which is often used in this courthouse:

We will assume that when you entered the courthouse this morning the sun was shining brightly and it was a clear day. There was no rain.

Now, assume that in the courtroom the blinds have been drawn and there are drapes over the windows which are closed so that you cannot look outside. Assume that you are sitting in your jury box and despite the fact that it was sunny and dry when you entered the building, somebody walks in through the door with an umbrella dripping water,

followed in a short time by someone else wearing a raincoat and the raincoat is dripping water.

Taking our assumptions, you cannot look outside to see whether it is raining or not, and if you are asked, "Is it raining?" you cannot say you know it directly of your own observation. But certainly upon the combination of facts as I have given them, even though when you entered the building it was not raining outside, it would be reasonable and logical for you to conclude that it was raining now.

That is about all there is to circumstantial evidence. You infer on the basis of reason and experience from an established fact the existence of some further fact.

As I have said, each defendant is entitled to have his guilt or innocence as to each of the crimes charged determined from his own conduct and from the evidence which applies to him as if he were being tried alone.

If you find that a defendant is guilty beyond a reasonable doubt of any of the crimes charged in the indictment, a verdict of guilty as to that count should be returned as to him. The guilt or innocence of any one defendant of any of the crimes charged should not influence your verdict regarding the other defendants. You may find

either one, two, three or none of the defendants guilty. You may find one, two, three or all of the defendants not guilty.

I will conclude with these few final remarks.

Under your oath as jurors you may not allow the consideration of punishment which might be inflicted upon a convicted defendant to influence your verdict in any way or in any sense enter into your deliberations. Your function is solely to determine the guilt or innocence of each defendant upon the basis of the evidence which has been presented here before you.

If you find that the charges or some of the charges have not been proved beyond a reasonable doubt, that defendant should be acquitted on those charges. But, on the other hand, if you find that some or all of the charges have been proved beyond a reasonable doubt, you should not refuse because of sympathy or for any other reason to render a verdict of guilty on the charges which you find were proved beyond a reasonable doubt.

There are twelve people who will be going into the jury room to deliberate on this case. Any verdict must be the unanimous verdict of all of you. I will point out, however, that no one should enter into the deliberations in the jury room with such pride of opinion that he or she

would refuse to change it if convinced by intelligent argument on the part of another juror or jurors that they are right.

However, you are not to do violence to your own well-founded opinion, your common sense and your good conscience.

As I said a few moments ago, your common sense is most important. You will be taking it into the jury room with you. I expect that when you come out of the jury room your good common sense will accompany you. You are entitled, each of you, to your opinion. In other words, each of you must decide each of the charges against each of the defendants for himself or herself after thoroughly reviewing the evidence and exchanging views with your fellow jurors.

After you have exchanged your views you should vote on each of the charges as to each of the defendants. Your vote should be either guilty or not guilty. The vote will be kept by Mr. Santa Croce on the verdict form which Miss Kruger will now hand to him. This form states at the top, "Verdict." Then it bears the number of the case and on the left-hand side it lists the defendants and counts in the order in which they are named in the indictment. Right after the names are the numbers of the counts which are being submitted to you. To the right there are lines

which indicate the counts relative to each of the defendants.

You should consider each defendant on each count separately and vote separately. In order for there to be a verdict on any count on any defendant the verdict must be unanimous.

Ladies and gentlemen, I have completed my charge. However, before sending you into the jury room to begin your deliberations I will see counsel at the side bar.

In the meantime, I will ask our four alternate jurors to get whatever belongings they have from the jury room and to return to their seats in the courtroom because after I send the jurors, 1 through 12, in to deliberate I would like to speak with the four alternate jurors. I want to thank them personally on behalf of all of us here for the service which they have rendered. I will excuse the four alternate jurors and direct them to gather up their belongings and then return to the courtroom. I will see counsel at the side bar.

[At the side bar:]

THE COURT: Mr. Kaufman, does the Government have any exceptions to the charge?

MR. KAUFMAN: No, your Honor.

THE COURT: Turning to the defendants, and taking you in the order your clients were named, Mr. Keegan, do you

have any exceptions?

MR. KEEGAN: No, your Honor.

THE COURT: Mr. Katcher?

MR. KATCHER: No, your Honor. That is, other than what was discussed prior to the charge.

THE COURT: Yes. You have already excepted in certain respects, but I am only talking about anything additional.

MR. KATCHER: Nothing additional.

THE COURT: Mr. Singer?

MR. SINGER: Nothing else, except briefly an exception to your Honor's reasonable doubt instruction. It was stated that: Few people, however guilty, could ever be convicted if you had to find them guilty beyond all possible doubt. I believe that that statement diminishes the standard of reasonable doubt and I would take exception to that.

THE COURT: You have your exception.

MR. SINGER: I also take exception to the accomplice instruction which was given.

THE COURT: In what respect?

MR. SINGER: As to the claims of the Government that it has offered substantial independent proof and corroboration from other witnesses.

THE COURT: This is what I read [indicating.]

MR. SINGER: In reading the instructions that were handed to me by Judge Ward I do not find additional exception to it. However, I would take exception to the instruction as read to the jury that if it is in conflict -- I don't see what the exception is at this time. I would except to the statement regarding accomplices.

THE COURT: I could only recall interpolating, in view of the prior objection which was voiced, where I discussed the Government's claim and I said something, if I recall, to the effect that this is what the Government claimed but it will be the jury's recollection on the matter which governed. That is the only interpolation I can recall.

In any event, you do take an exception?

MR. SINGER: Yes, I would. I also except to the instruction that frequently it happens that only members of the conspiracy have evidence which is relevant and important in a case. I also except to the charge that the Government has difficulty prosecuting wrong doers without the use of accomplice testimony.

THE COURT: I will let the charge stand as to prosecuting wrong doers. Do you take exception to the Court's accomplice charge with respect to the statements

you just made?

MR. SINGER: Yes, together with the previous things I took exception to, and I have no other exceptions.

THE COURT: You excepted to the accomplice charge and I am going to let it stand as delivered.

Mr. Hartmann?

MR. HARTMANN: If your Honor please, at this time I take exception to your Honor's charge in connection with the participation in the conspiracy. More specifically where the Court charged the two examples and the language contained in both of those examples were equally applicable to the other two defendants involved in this case and that they never actually had any role in the actual importing of the heroin and also that they did not know the co-conspirator named Ma out in Bangkok. In view of the fact that your Honor has singled out my client and he was the only one mentioned during the entire charge for participation in the conspiracy, I except to that portion of your Honor's charge. That is the only exception I have.

THE COURT: Any requests for supplemental instructions? Mr. Kaufman?

MR. KAUFMAN: No, your Honor.

THE COURT: Mr. Keegan?

MR. KEEGAN: No, your Honor.

THE COURT: Mr. Katcher?

MR. KATCHER: No, your Honor.

MR. SINGER: Not other than those submitted, your Honor.

THE COURT: Mr. Hartmann?

MR. HARTMANN: Going back to the fact that my client was singled out and his name mentioned on several occasions in connection with the participation of the conspiracy and the Government's contention specifically given in connection with my client to the jury, I ask that your Honor charge the jury in connection with my client's intentions in connection with the conspiracy that Pon fabricated these three deliveries and that his identification of my client from a single photograph was in furtherance of that fabrication.

THE COURT: I will let the charge stand as delivered. The request made by Mr. Hartmann for supplemental instructions is denied. You have your exception.

MR. HARTMANN: Thank you.

THE COURT: Is there anything further, gentlemen?

MR. HARTMANN: No, your Honor.

THE COURT: Very well. It is my thought to send the jury in to deliberate. I would appreciate it, Mr. Kaufman, if you as promptly as possible could obtain a

redacted version of the indictment. I have reason to think that probably within the first 15 minutes we will get a note to the effect that they would like to see a copy of the indictment.

MR. KAUFMAN: If there is no objection by any counsel, your Honor, the only thing that still has to be redacted is one overt act, No. 27.

THE COURT: What about the other counts?

MR. KAUFMAN: That is right.

THE COURT: I think that can be done with a scissors.

MR. KAUFMAN: As soon as the jury leaves we will have it done within ten minutes.

MR. HARTMANN: The simplest way to do it is cut it out with a scissor and then have it Xeroxed.

THE COURT: Anything further?

MR. KAUFMAN: No, your Honor.

[In open court:]

THE COURT: At this time, Miss Kruger, would you place the deputy marshals under oath?

[Marshals sworn.]

THE COURT: At this time I will instruct the jury made up of Jurors 1 through 12 to proceed to the jury room and direct at this time that you commence your delibera-

tions. The only caution I would make is that your deliberations should be conducted with all twelve jurors round the table and if some juror has to go to the lavatory or some other place for a few moments, I would appreciate if you would suspend and then resume your deliberations on the case when all of you are gathered round the table. It is now 12:20.

Marshal, I would ask that arrangements be made to take the jury to lunch at one o'clock. We will await your pleasure, ladies and gentlemen, until that time. I am assuming that you will not reach a verdict in the interim period. Needless to say, that is not an instruction that you should or should not. You will deliberate on this case as you see fit.

When the jury goes to lunch I will excuse counsel as well. You can plan, ladies and gentlemen, leaving here probably about five minutes of one. I will ask the marshal to make plans for the jury for lunch and I will direct counsel to remain until then and then return at 2:15. That is the usual time for the round trip.

At this time I instruct the jury of twelve to proceed to the jury room and commence their deliberations. Marshal, would you provide paper and pencils should the jurors need them?

DEPUTY MARSHAL: I have them right here.

[Jury deliberations began at 12:20 p.m.]

THE COURT: The four alternates will remain. I want to speak to you for a few moments.

[Alternate jurors were excused.]

THE COURT: Gentlemen, I have just received a note from the jury which I will ask be marked Court Exhibit 1. The note reads as follows:

"10/15/75. Request definition of No. 1, 2, 6, 11, 14. Indictment and overt acts.

"Alexander Santa Croce."

I suggest that although the word definition may be a poor choice, my reading of this note has caused me to conclude that the jury has requested that we send in a copy of the indictment and unless there is an objection I propose to send in the redacted indictment.

MR. SINGER: For purposes of the record, I do object to the sending in of the indictment to the jury. I think it memorializes the statement of the Government's case. I understand the problem that the jury has with respect to determining what charges deal with which counts and for purposes of the record I do object to the sending in of the indictment.

THE COURT: In view of your objection I am

prepared to send the following note to the jury:

"I do not understand your note. Do you wish a copy of the indictment?"

MR. SINGER: I believe that your interpretation of the note is correct. My objection is to the sending in of a copy of the indictment, even if they would request it, and I think that your interpretation of it is correct, that they are requesting it.

THE COURT: I see. What you are saying is assuming that they have requested it, and you agree with my interpretation, you still object to my sending a copy in?

MR. SINGER: Yes.

THE COURT: That puts a different light on it. I misunderstood your statement.

MR. HARTMANN: They may be arguing about your verdict sheet indicating 1, 2, 6, 11, 14. Maybe they want a clarification and if you send a note in and tell them that Count 1 indicates the conspiracy count, I think that may be what they are inquiring about.

THE COURT: Does anyone else want to comment?

I propose to send in a copy of the redacted indictment.

MR. KATCHER: I don't think it is clear. They may not be very clear on the definition of the overt acts

and how it relates to the indictment. They may not be very clear on the definition of the aspects of the crime. There are so many different interpretations that one can draw from the cryptic note.

MR. KAUFMAN: I would ask your Honor send in a copy of the indictment to the jury and maybe a note from your Honor saying: If there is anything further that you need, please send us another note.

THE COURT: I had thought of that and I feel at this stage that it would be better just to send in a copy of the indictment -- I weighed that in my own mind -- rather than a note. The only alternative is a note to the jury saying: I do not understand your note. Please write another.

Do you want that?

MR. KATCHER: I would make that request, your Honor.

THE COURT: Then I will do that.

[Pause.]

THE COURT: Gentlemen, I am handing the following note to Miss Kruger with the instruction that she give it to the marshal for the jury:

"10/15/75, 12:55 p.m.: Members of the jury, I do not understand your note. Please write another.

Judge Ward."

Any objection to that?

MR. KATCHER: No, your Honor.

MR. HARTMANN: No, your Honor.

THE COURT: Very well, Miss Kruger.

[Court Exhibit 1 marked for identification.]

[Recess.]

[At 1 p.m.:]

THE COURT: Gentlemen, the marshal has just entered the courtroom and has informed the Court and counsel that the jurors have indicated a desire to go to lunch and have further indicated that they will be sending us a further communication upon their return from lunch. It is now five past one. I am going to request that counsel go to lunch now and return back here in the courtroom at 2:15.

Is that agreeable, gentlemen?

MR. HARTMANN: Yes, your Honor.

THE COURT: Enjoy your lunch.

[Luncheon recess until 2:15 p.m.]

AFTERNOON SESSION

[2:15 p.m.]

[The jury resumed its deliberations.]

[At 2:55 p.m.:]

THE COURT: Gentlemen, I have received a second note from the jury which I will ask be marked Court Exhibit 2:

"The defendants are accused of various counts, one or more, each defendant. The counts are 1, 2, 6, 11 and 14. We know that 1 is conspiracy. What are 2, 6, 11 and 14?

"Thank you, Alexander Santa Croce."

I would suggest that the best way to respond to this question would be bring out the jury and read the substantive counts to them. I do not think it necessary at this time to repeat any portions of the charge which relate to the substantive counts. I will hear from counsel on that.

MR. KAUFMAN: The Government believes that accurately responds to the jury's inquiry.

MR. SINGER: Yes, your Honor, I agree.

MR. KEEGAN: Why don't you send them the indictment?

THE COURT: If you are in agreement as to

sending the indictment in to the jury, of course I will do that. Let me ask Mr. Katcher and Mr. Hartmann about that.

MR. KATCHER: In the absence of Mr. Olsen, your Honor, I would suggest that your Honor bring the jury out and read to them the substantive counts.

MR. HARTMANN: Your Honor, I'm in agreement with that.

THE COURT: Mr. Keegan, I gather though you would prefer to have the indictment sent in, in view of the comments of the other counsel you do not disagree with doing that?

MR. KEEGAN: No, I don't disagree with bringing the jury in.

THE COURT: Very well. As soon as Mr. Olsen arrives --

MR. KATCHER: I can waive his absence, if that is satisfactory to the others and to the Court.

THE COURT: No, I prefer to have him here. I do not know why the marshal has not brought him out. I suggest that we wait until he is brought in, which should be in a matter of moments.

[Pause.]

THE COURT: Mr. Olsen is present.

Let the record reflect that all of the defendants

and their lawyers and Government counsel are present in the courtroom.

Miss Kruger, would you bring the jury in.

[Jury present.]

THE COURT: Mark the note as Court Exhibit 2.

[Court Exhibit 2 marked for identification.]

THE COURT: Good afternoon, ladies and gentlemen. I trust that you have enjoyed your lunch.

We received one note from the jury this morning and I could not quite understand it so I asked for another and you sent one out to me and the note reads as follows, and it has been marked Court Exhibit 2:

"The defendants are accused of various counts, one or more, each defendant. The counts are 1, 2, 6, 11 and 14. We know that 1 is conspiracy. What are 2, 6, 11 and 14?

"Thank you, Alexander Santa Croce."

Counts 2, 6, 11 and 14 are what I call the substantive counts. You will recall that they involve Mr. Olsen on Counts 2, 11 and 14 and Mr. Leong on Count 6.

I will now read Counts 2, 6, 11 and 14.

The second count:

"The Grand Jury charges: On or about the 26th day of August, 1971 in the Southern District of New York,

Ernest Olsen, the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 5,250 grams of heroin."

This is charged as a violation of Title 21 of the United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).

The Sixth Count:

"The Grand Jury further charges: On or about the 16th day of September, 1971 in the Southern District of New York, Victor Leong, also known as 'Foon Choy Leong', the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 250 grams of heroin."

That is charged as a violation of Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).

The Eleventh Count:

"The Grand Jury further charges: On or about the 3rd day of December, 1971 in the Southern District of New York, Ernest Olsen, the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 3,500 grams of heroin."

That is charged as a violation of Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).

The Fourteenth Count:

"The Grand Jury further charges: On or about the 8th day of March, 1972 in the Southern District of New York, Ernest Olsen, the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 9,450 grams of heroin."

That is charged as a violation of Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(b)(1)(A).

I have now read to you the charges in the indictment relative to Counts 2, 6, 11 and 14, the so-called substantive counts.

In the event the reading has not fully responded to the question presented in your note you are free to communicate further by note after you have returned to the jury room.

The jury is excused and directed to return to the jury room to continue its deliberations.

[The jury left the courtroom.]

[Recess.]

[Note at 4:35 p.m.:]

14

THE COURT: Gentlemen, I have received a note

from the jury. Miss Kruger, would you please mark this Court Exhibit 3.

[Court Exhibit 3 was marked for identification.]

THE COURT: The note reads:

"Could we please hear the cross-examination by Mr. Hartmann of both Pon You Wing and Lam King Sang?

"Thank you, Alexander Santa Croce."

Mr. Reporter, would you get the cross-examination out and check it, if you would, with Mr. Hartmann, and I would ask that it be read.

[Jury present.]

THE COURT: Good afternoon, ladies and gentlemen. I have your note which has been marked Court Exhibit 3. The request is that you hear the cross-examination by Mr. Hartmann of both Pon You Wing and Lam Kin Sang. We have located the cross-examination in the transcript. It will be read by our Court Reporter.

[Record read.]

THE COURT: The requested testimony having been read to you, the jury is directed to return to the jury room to continue its deliberations.

[Recess.]

THE COURT: I plan to bring the jury into the

courtroom now and indicate that arrangements have been made for them to have dinner at 6:30 and that I will return to the courtroom and be available to them beginning at 7:30, and that if they deliberate this evening I will see to it that they are taken home.

Is that agreeable to everyone?

MR. KAUFMAN: Yes, your Honor.

MR. HARTMANN: Yes, your Honor.

MR. KATCHER: Agreeable to the defendant Olsen, your Honor.

THE COURT: Marshal, would you bring in the jury.

[Jury present.]

THE COURT: Good evening, ladies and gentlemen: The reason I called you out at this hour is to make some announcements to you. Arrangements have been made for you to be taken to dinner at 6:30 p.m. I shall be here in the courtroom and shall be available to you again beginning at 7:30.

Finally, so that you do not feel in any way under pressure, I will tell you that if you should deliberate this evening I will see to it that each of you is taken home so that you need not be fearful about traveling late in the subway or on any public transportation.

In the event any of you wish messengers relayed to

your family that you will be late this evening so they should not worry about you, if you will give the information to the marshal as to who to call and the number, I know he will make every effort to make the calls. He is limited in what he can do, but I know he will work with you to the fullest extent possible.

Therefore, unless the jury believes that they have something which would require the attention of Court and counsel within the next ten minutes or so before you leave for dinner -- if you do have anything, Mr. Foreman, ladies and gentlemen, without what telling me what it is, just raise your hand -- what I am going to do is to have the jury go back to the jury room. I believe that you will all be leaving with the marshal in the next five minutes.

Is that correct, marshal?

THE DEPUTY MARSHAL: Yes, your Honor.

THE COURT: The jury is excused and I will direct the marshal to escort you to dinner. Then you will return and continue your deliberations. I will request counsel to reassemble here in the courtroom at 7:30 p.m. Thank you.

[The jury left the courtroom.]

THE COURT: Counsel are excused.

[Recess.]

THE COURT: Gentlemen, I have received a note

from the jury which I have marked Court Exhibit 4 for identification. It reads:

"Three cancelled checks purchased at the Bank of North America. Government Exhibit. Entire testimony of two male Government agents from San Francisco, direct and cross-examination. Two plane tickets in evidence for defendants.

"Thank you, Alexander Santa Croce."

Gentlemen, I propose to bring out the jury and to have the testimony read. Actually, there are three male agents from San Francisco and I'm sure they want Lowrey Leong, whose testimony is the longest. The other two agents testimony is rather brief and I suggest, rather than inquire which of the agents they want, we give them everything.

Is there any objection to that?

MR. HARTMANN: No.

MR. SINGER: No.

MR. KEEGAN: No.

MR .KATCHER: No, your Honor.

MR. KAUFMAN: No.

THE COURT: The three cancelled checks purchased at the Bank of North America I have had picked out. They are Government Exhibits 68, 69 and 70. Those are clearly what the jury wants.

Is there any comment which anyone wishes to make on that?

MR. SINGER: Can I look at those for a second?

THE COURT: Yes.

MR. SINGER: I don't see anything on it, your Honor.

THE COURT: There is no objection. It is obvious that that is what the jury wants.

The third item, the two plane tickets in evidence for defendants, I have had handed to me. They are defendant Leong's Exhibits C and D in evidence. I propose to give them to the jury and to advise the jury that we believe those are the exhibits they have requested; that there are other airline tickets which are in evidence and if they want them they can ask for them.

That is the way I plan to handle that. Any problems?

MR. HARTMANN: No, your Honor.

MR. KEEGAN: No, your Honor.

MR. KAUFMAN: No.

THE COURT: Bring in the jury.

[Jury present.]

THE COURT: The reporter will now read the direct and cross-examination of each of the three Government

agents.

[Record read.]

THE COURT: Ladies and gentlemen, turning back to your note, Court Exhibit 4 for identification, there are two other requests. In response to your request for three bank checks I will hand to your Foreman Government Exhibits 68, 69 and 70 in evidence.

In response to your request for two plane tickets in evidence for defendants, I hand to your Foreman Defendant Leong's Exhibits C and D in evidence. which I believe are the exhibits which you asked for.

There are other plane tickets which are in evidence. If you want any other plane tickets they will be sent into you upon your request.

The jury is excused and directed to return to the jury room to continue its deliberations.

[The jury left the courtroom at 11:05 p.m.]

[Recess.]

THE COURT: Ladies and gentlemen, it is now a quarter of twelve and I would suggest that you have been deliberating, including your lunch and dinner, for the better part of twelve hours. I am going to recess court at this time. I have arranged for limousines to take each of you in groups home. I understand that one

of our jurors who lives in Putnam County will be able to stay in the City and I will sign any vouchers necessary to insure that his expense of staying overnight in the City is covered.

As you leave and go to your homes, I admonish you most strenuously, first, do not discuss the case with anyone after you leave the courtroom. That includes the very strong temptation, I'm sure, to tell your husbands, wives, families, what you have been doing. But I must instruct you not to discuss the case with anyone.

I suggest that each of you when you get home try to get a good night's rest, because I know you have worked hard. I'm sure you are quite tired.

In view of the lateness of the hour, we will resume tomorrow morning at eleven o'clock. I would ask you all to assemble at eleven o'clock in your jury room. I will be available to you from that time on. I understand the limousines should be here at any time.

Again, please do not discuss the case with anyone. We will recess at this time and I instruct you to return tomorrow at 11 a.m. to resume your deliberations in this case. Good night.

[The jury left the courtroom.]

THE COURT: Marshal, do we have all the exhibits?

THE DEPUTY MARSHAL: Yes, sir.

[Trial adjourned until 11 a.m., October 16, 1975.]

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on airline tickets that he would like to put into the record or who in any way disagrees with the Court sending those enumerated exhibits into the jury in accordance with the request which I have read?

MR. HARTMANN: No, your Honor.

THE COURT: I hear no objection and that will be the first part of the response to the jury's request.

Part 2: "We would like to see defendant Olsen's seamen's passbook and passport."

Mr. Kaufman.

MR. KAUFMAN: Your Honor, neither of those two items are in evidence, so I am not sure what the jury is asking for. It may be that they want to see some of the I 94 forms or immigration forms. I just don't know. We cannot comply with the exact wording of their request because it doesn't exist. We may want to tell them that what they ask for does not exist, but there are other immigration documents pertaining to Olsen and if they want those they should ask us for them.

THE COURT: I suggest that they have made a specific request and I think that what I will do, gentlemen, is to handle that request the way we handled the one last night. I will tell them that these things do not exist. If there are any other exhibits which they want, they can

request them without any specificity.

Is there any objection to that?

MR. KATCHER: Your Honor, rather than tell them they don't exist, tell them that they are not in evidence.

THE COURT: That would be agreeable.

MR. KATCHER: If they are asking for specific ones, I think the answer should be directed to the specific question.

THE COURT: Yes. I will tell them that the passbook, the seamen's passbook, the words they have used here, and the passport which they have requested are not in evidence. If they wish any other documents they will be sent into them upon their request.

Finally they want the dates of the alleged substantive charges on Counts 2, 11 and 13, and those dates, subject to your checking them out, gentlemen, should be: Count 2, August 26, 1971; Count 11, December 3, 1971; Count 14, March 8, 1972.

Is there any comment on that? Those are on or about dates. That is the way I would put it to them, on or about those dates.

Any comment?

The final question is this: Do you prefer that I respond to the jury's request by a note or do you prefer

that I bring the jury into the courtroom, hand them the airplane tickets and advise them orally of the remaining matters that we have taken up?

MR. SINGER: I suggest, your Honor, that you just send it into them. I think since they are just requesting the dates that it is not necessary to bring them in here and read three or four dates to them. We are going to hand them the rest of the material anyway. I would suggest that you just send them back to them and with the dates.

MR. KATCHER: Will we handle the other one with respect to Olsen the same way?

THE COURT: Yes.

MR. KATCHER: That there are no passports in evidence?

THE COURT: Yes. I will write it up and read it to you before I deliver it into them.

[Pause.]

THE COURT: I have written the following note:

"October 16, 1975, 12 noon:

"Members of the jury: In response to your most recent note, (1) I have directed the marshal to hand you all of the airplane tickets in evidence."

Those are the tickets, gentlemen, which I enumerated before

"(2) Defendant Olsen's seamen's passbook and passport are not in evidence. If you want any other documents they will be sent into you upon your request.

"(3) The dates of the alleged substantive charges are as follows: Count 2, on or about August 26, 1971; Count 11, on or about December 3, 1971; Count 14, on or about March 8, 1972. Judge Ward."

MR. KATCHER: As to the passport situation about Olsen, I would suggest a phrase be used that there are no passports or seamen's books in evidence. They get the impression they were offered and for some reason or other they were rejected or not accepted in evidence. In other words, no passports in evidence. We eliminate any second thoughts on their part that they have been at some point in time offered in evidence and rejected by a motion being made as to their introduction.

MR. KAUFMAN: Your Honor, I think your note perfectly spells out the situation. I don't think it needs to be reworded.

THE COURT: I think you are quibbling with language, sir, to be candid with you. If you want it, I will write it over again.

MR. KATCHER: Yes, your Honor.

THE COURT: You write out the language you want

and hand it to me.

MR. KATCHER: Just a few words --

THE COURT: Write out the language. I took your language for the first one I wrote out in a note and now you object. I have to write it over again. Because you object I will write it over again and I will send it in. I think it is quibbling, but I am going to do it.

[Pause.]

THE COURT: Show it to Mr. Kaufman and Mr. Flannery first and see if you can agree .

MR. FLANNERY: The note provided by Mr. Katcher states, "There are no Olsen passports," which is more narrow than your original note as proposed to go to the jury.

THE COURT: That is what he wants.

MR. FLANNERY: It does not refer to a seamen's passbook, your Honor.

THE COURT: I will try to copy the language of the note. Try to agree on some language. If you don't I will write something out.

MR. FLANNERY: The original language seemed more appropriate.

THE COURT: I thought so, too.

MR. KAUFMAN: Mr. Katcher says there are no Olsen passports in evidence. I would say, "There are no

Olsen passports or seamen's passbooks in evidence," because that is what the jury asked for.

MR. KATCHER: Yes, satisfactory.

MR. KAUFMAN: Then continue with the second sentence which you originally put in.

THE COURT: All right, I am writing it out.

[Pause.]

THE COURT: Here is what I am writing on No. 2:

"There are no Olsen seamen's passbooks or passports in evidence."

MR. KATCHER: That is agreeable, your Honor.

THE COURT: Thank you. Then I will add the second sentence:

"If you want any other documents they will be sent into you upon your request."

Very well.

[Pause.]

THE COURT: I have finished the note. Let me read it to you. I put on it the same date and time:

"(1) I have directed the marshal to hand you all of the airplane tickets in evidence.

"(2) There are no Olsen seamen's passbooks or passports in evidence. If you want any other documents they will be sent into you upon your request.

"(3) The dates of the alleged substantive charges are as follows:

"Count 2, on or about August 26, 1971; Count 11, on or about December 3, 197; Count 11, on or about December 3, 1971; Count 14, on or about March 8, 1972.

"Judge Ward."

Any objections?

MR. HARTMANN: No, your Honor.

MR. KAUFMAN: None for the Government.

THE COURT: Thank you, gentlemen.

Marshal, I am handing you defendant Leong's Exhibits C and D in evidence together with Government Exhibits 27, 28, 50, 52, 57, 58 and 59, all in evidence.

I direct you to hand these exhibits to the jury together with the note which I have just dictated into the record.

[Recess.]

THE COURT: Gentlemen, I have instructed the marshal to make arrangements for the jury to go to lunch. I asked the marshal to make reservations for the jury to lunch at 1:15 p.m. I would excuse counsel at that time and will ask the marshal to have the jury back and will direct counsel to return at 2:30 p.m.

Is that agreeable to everyone?

MR. KAUFMAN: Yes.

MR. KEEGAN: Yes.

[Recess.]

THE COURT: I have just received another note from the jury. Miss Kruger, would you mark this as the next Court Exhibit.

[Court Exhibit 6 marked for identification.]

THE COURT: Gentlemen, the note reads as follows:

"Can we have the balance of the defendant's exhibits on behalf of Victor Leong. Thank you. Alexander Santa Croce."

First, gentlemen, I would note for the record that all of the counsel are present in the courtroom as are all defendants with the exception of Mr. Olsen, who is presumably in the custody of the marshal and not within the confines of the courtroom. In view of the request as I read it to you, Mr. Katcher, are you in a position to waive the appearance of Mr. Olsen?

MR. KATCHER: Yes. The answer is yes, your Honor, and I am sure that Mr. Olsen cannot in any way be prejudiced by his absence at this point as a result of this particular request by the jury.

THE COURT: Thank you, Mr. Katcher.

Gentlemen, I have reviewed my own records and have concluded the only exhibit introduced into evidence by the defendant Leong which is not presently in the jury room is Defendant Leong's Exhibit F, a registration record

from the George Washington Hotel.

Mr. Keegan, do you now of any other exhibits that have not yet been sent in to the jury?

MR. KEEGAN: No, your Honor, as far as I know.

THE COURT: Mr. Kaufman?

MR. KAUFMAN: No, your Honor.

THE COURT: Is there any objection on the part of anyone to the Court sending into the jury at this time defendant Leong's Exhibit F in evidence, which is a single sheet registration card of the Hotel George Washington?

MR. HARTMANN: No, your Honor.

MR. KEEGAN: No, your Honor.

MR. KAUFMAN: No.

THE COURT: I will request the marshal to please deliver defendant Leong's Exhibit F to the jury and indicate to them that this exhibit constitutes the balance of the defense exhibits on behalf of Mr. Leong. Thank you, marshal.

[Recess.]

THE COURT: I have received another note from the jury. Miss Kruger, would you mark this the next Court exhibit.

*** [Court Exhibit 7 marked for identification.]

THE COURT: The note reads as follows:

"All Government's evidence on Victor Leong; date

and place on Count 6. Thank you, Alexander Santa Croce."

We have no problem with the date on Count 6 and I suppose we can work out the place because it is alleged to be the Southern District of New York. Mr. Kaufman, where would the place be?

MR. KAUFMAN: I'm not sure off the top of my head, your Honor.

THE COURT: It would be the half pound.

MR. KEEGAN: My recollection is that there is no testimony as to where that took place. The allegation in the indictment is that it took place in the Tung On Association, but that is my reading of their request.

THE COURT: What is your reading of their request?

MR. KEEGAN: They want to know where it took place and there is no evidence as to where it took place, as I recall it. Maybe I'm wrong.

MR. KAUFMAN: I'm just going to check.

THE COURT: I have something under Lam Kin Sang on October 1st. Let me get the page out.

MR. KEEGAN: About 757.

MR. KAUFMAN: Direct testimony on the half pound is on 760 and does not state where that transaction took place. It begins at 759. It says that they met at a gambling house.

THE COURT: I don't seem to see anything here at Page 759, et sec, as you have indicated, Mr. Kaufman.

MR. KAUFMAN: No, I don't believe it does. I'm just checking the cross-examination.

THE COURT: All right.

The best that could be said is New York.

MR. KEEGAN: Your Honor, I think it best that I renew my motion for a judgment of acquittal on the ground that the Government has failed to prove the substantive count occurred in the Southern District of New York.

THE COURT: He says, "There did come a time when you left New York and you went out of New York," so I think the inference is sufficient that it is New York.

Let me await your perusal of the matter, gentlemen.

[Pause.]

THE COURT: Gentlemen, I propose to send the following note into the jury:

"October 16, 1975, five p.m.

"Members of the jury: In response to your note requesting (1). All Government's evidence on Victor Leong, could you be more specific? Do you wish to have exhibits only or do you want all testimony as well?

"If you want all testimony it will be necessary

for us to review the entire trial transcript, which will take some time.

"(2). Date and place on Count 6.

"Do you want the charges contained in Count 6 or do you want the testimony or both?"

Is that satisfactory, gentlemen?

MR. KEEGAN: It is, your Honor.

MR. KAUFMAN: Yes, your Honor.

THE COURT: Marshal, would you deliver this note to the jury and tell them that it is in response to the latest note that they sent to us, and we will await their reply. Thank you.

MR. KEEGAN: Your Honor, at this time defendant Leong renews his motion for a judgment of acquittal on the ground that the Government has failed totally to prove that the offense alleged in Count 6 took place in the Southern District of New York.

"The transcript at Page 760 indicates the question:

"Did there come a time when you gave him" -- referring to Victor Leong -- "a half a pound?

"Yes."

Although there is earlier testimony that the first meeting or a meeting between Mr. Leong and Mr. Lam took place

at the Tung On Association in the Southern District, the original reference with respect to the actual transfer of the heroin, as to when it took place and where it took place. We know Mr. Lam was storing the heroin at his home in Queens and it is entirely possible that Victor Leong took a half pound from Mr. Lam and did so in the Eastern District, not the Southern District.

THE COURT: I note that overt act 20 in the conspiracy count -- I know you are not addressing your motion to that at this point, but it does allege that Mr. Leong -- these are the last three lines -- "thereafter received approximately 250 grams of heroin from Lam Kin Sang at the Tung On Association Gambling House, in New York, New York."

And my first question to Mr. Kaufman is this: Is there any direct or circumstantial evidentiary support for that allegation?

That seems, as I see the indictment, to basically be the Government's particularization of the transaction in question. Am I right in assuming that is in essence the Government's particularization of the transaction in question?

MR. KAUFMAN: Yes, your Honor. I think there is circumstantial evidence on it, if you read the full

context of the initial meeting with Victor Leong starting at Page 758. He talks about meeting him at the gambling house, having a conversation, this being in the middle of September 1971.

"Was anybody else present?"

The answer is, "Yes, but nobody else could hear us.

"What was your conversation?"

Lam says: "I told him that I have some white powder, will he look for somebody to buy them, and Victor Leong agreed.

"What else was said?

"Victor Leong agreed to buy a half pound from me for $2,000.

"Did there come a time when you gave him half a pound?

"Yes.

"Did he pay for it?

"Yes.

"Did you have a conversation?"

He continues on to the conversation. The whole line of questioning, I think, at least, allows the jury to infer that it was continuing at the Tung On Gambling Association.

THE COURT: You mean he suddenly pulled out from his briefcase a half a pound of heroin and --

MR. KAUFMAN: Not at that same conversation, obviously, because it says later on.

THE COURT: Yes, it does. I note that it says later on.

MR. KAUFMAN: But Mr. Keegan says that the heroin was being stored in Queens. It is just as likely he got it there.

No. 1, Lam testified about three earlier transactions from that same shipment with Lee Louie, all of which took place at the No. 1 Club in Manhattan. Also that Victor Leong was staying at the George Washington Hotel and even assuming Mr. Keegan's supposition that the actual transaction took place in Queens, since he was staying at the George Washington Hotel, he would have brought him back to the Hotel with him before he left New York.

The Government submits that there is more than enough inferential evidence for the jury to find that took place in the Southern District of New York, and, in any event, the motion now on the basis of venue is untimely.

MR. KEEGAN: It is just as likely that he would have gone to the airport being in Queens. We know that Pon You Wing went to Mr. Lam's home, I believe on two

occasions to pick up heroin and whatever occurred in New York, it is clear that this refers to a later point in time when there is nothing specified as to when and where the transfer took place. We are asking the jury to guess at that with absolutely no basis, no evidence at all. I realize the overt act alleges it took place at the Tung On Association. The pleading is therefore proper but won't survive based on the pleading because there is no proof, and I move to strike the overt act as well.

THE COURT: I think it is a little late to strike the overt act at this juncture, since it has already been read to the jury.

MR. KEEGAN: Better late than never, your Honor.

THE COURT: I must say the jury's question about the place does appear to the Court to be troublesome. Is there anything in the cross-examination of Mr. Lam by, for example, Mr. Keegan or anyone else which comes back to this subject? Occasionally this happens.

MR. KAUFMAN: I have checked it and haven't found it, your Honor. The question is troublesome because if the jury is looking for an answer and doesn't get it, they may decide that the Government has not proven its case satisfactorily; that it is a question for the jury to decide which is exactly where we're at.

THE COURT: In the first instance, Mr. Keegan, I am going to leave the matter for the jury's determination. The jury's verdict on the subject may make our discussion academic. It seems to me that if, as and when they convict on this count you may want to renew your motion. I think that would probably be more appropriate.

MR. KEEGAN: Yes, your Honor.

THE COURT: Off the record.

[Discussion off the record.]

[Recess.]

THE COURT: Gentlemen, I have received a note from the jury. Miss Kruger, would you mark this as the next Court's exhibit.

*** [Court's Exhibit 8 marked for identification.

THE COURT: The note reads as follows:

"Please give us the exhibits only for or on Victor Leong."

Then there is a line and I continue:

"We want the charges as contained in Count 6, time and place. Thank you, Alexander Santa Croce."

Can you gentlemen agree upon the exhibits?

[Pause.]

THE COURT: Gentlemen, in response to the jury's request I propose to send in the following material.

Relative to the first request on Exhibits, I plan to send into the jury Government Exhibits 45, 46, 47 and 49 in evidence.

In connection with the jury's second request, I plan to send in a Xerox copy of Count 6 of the indictment.

Satisfactory?

MR. KAUFMAN: Yes, your Honor.

MR. KATCHER: Yes.

MR. KEEGAN: Yes.

MR. HARTMANN: Yes, your Honor.

THE COURT: Here you are, marshal.

THE MARSHAL: Thank you, your Honor.

[Recess.]

THE COURT: Gentlemen, the marshal has just informed me that Juror No. 2 is not feeling very well. I plan at this juncture to inquire of the jury whether they have reached a verdict as to any of the defendants and in the event they have, I plan to take their verdict. If they are still deliberating on all the defendants or some of the defendants, I plan to send the jury home and direct that they return Monday morning at ten a.m. to resume their deliberations.

I will hear from any counsel who wishes to speak.

MR. KEEGAN: I oppose what the Court has proposed

to do on the ground that the jury is apparently working backwards from the verdict sheet and has now reached my client, Victor Leong. I am concerned that this will put pressure on them to return a verdict.

THE COURT: I do not plan to have them deliberate any further tonight. In other words, if they have reached verdicts on any of the defendants at this time I will take their verdicts. I will not rush them to judgment.

MR. KEEGAN: If your Honor will make it clear to them that it is only verdicts which they have already arrived at prior to receiving this note --

THE COURT: I will bring them out into the courtroom and do it so that you can hear it.

MR. KEEGAN: I don't see how they could report the verdict. That is what I am afraid of.

THE COURT: I will explain the whole thing to them. If you want me to send a note in instead, I will do that.

MR. KEEGAN: No,your Honor. I request the declaration of a mistrial on the basis that the jury is unable to continue deliberations.

THE COURT: I will ascertain whether they have reached a verdict as to some and if they have not as to others it is obvious they have not agreed. The jury will

be polled and you will be able to see and hear the particular juror, if they have reached a verdict.

I don't see any alternative.

Is there anyone else who wants to be heard?

MR. HARTMANN: No, your Honor.

MR. SINGER: Your Honor, with respect to the illness of Juror No. 2, could we have some understanding if he just became ill or has he been ill?

THE COURT: I understand that he suffers from an ulcer and it has been bothering him and he has some pain at the present time, and I frankly do not think that if someone has pain he should continue deliberating tonight.

MR. SINGER: Absolutely not.

THE COURT: Accordingly, since we never know what the future will hold, in the exercise of my discretion I plan to bring out the jury and make the inquiry of them at this time.

Does anyone else wish to be heard?

Marshal, bring in the jury.

THE DEPUTY MARSHAL: Your Honor, the jury has requested that you give them one more minute.

THE COURT: One more minute?

THE DEPUTY MARSHAL: Yes, sir.

THE COURT: All right, marshal.

[Pause.]

[Jury present at 6:15 p.m.]

THE COURT: Good evening, ladies and gentlemen, I called you out because it was reported to me by the marshal that has been attending you that Juror No. 2 has not been feeling well. In view of this fact it is not my intention to have you deliberate any further this evening. If at this point in your deliberations you have reached a unanimous verdict as to any charge or charges against any defendant or defendants I shall take your verdict at this time and if you have not reached a unanimous verdict as to any charge or charges against any defendant or defendants it is my intention to send you home now.

Of course, you can override my intention if you wish, but I understand that one of your number is not feeling up to par.

I would ask you at this time to please return to your jury room and then come back to the courtroom at which time I would ask your foreman to report any verdict that you have already arrived at. I would instruct you that I only want you to report whatever verdict or verdicts you have already arrived at.

I will ask the jury to return to the jury room and if the foreman would go over the jury form and if you

have agreed unanimously on any matters as far as charges or defendants, please, when you return to the courtroom, report that matter to me. In the event you have any question relative to what I have just said you may, of course, send out a note, but I do instruct you at this time not to deliberate further on the case. The jury is excused. I will await your return shortly.

[Pause.]

THE COURT: Gentlemen, does anybody have any objection to the procedure which the Court has just outlined to you?

MR. KEEGAN: I do not, Judge.

THE COURT: Thank you, Mr. Keegan.

MR. KATCHER: I don't, your Honor.

THE COURT: Thank you, Mr. Katcher.

MR. SINGER: No objection.

THE COURT: Thank you, Mr. Singer.

MR. HARTMANN: No objection, your Honor.

THE COURT: Thank you, Mr. Hartmann.

[Jury present at 6:25 p.m.]

THE COURT: Miss Kruger, would you ascertain if all members of the jury are present?

[Jury roll taken; all present.]

THE CLERK: Mr. Foreman, has the jury agreed

upon a verdict on any charge or charges against any defendant or defendants?

THE FOREMAN: No, your Honor.

THE COURT: In other words, all matters remain open?

THE FOREMAN: Yes, your Honor.

THE COURT: Very well.

Ladies and gentlemen, I am going to send you home now in view of the indisposition of Juror No. 2. I am going to excuse the jury and direct that you return to continue your deliberations on Monday, October 20, 1975 at ten a.m. In the interim I will give you the same instructions that I gave you last night when you went home.

Please do not discuss this case with anyone including members of your family, your friends, anyone. The jury is excused and directed to return to continue their deliberations on Monday, October 20, 1975 at ten a.m.

It is now 6:30 and I am not in a position at this hour to call limousines. If you believe that you can all get home safely to your respective residences, and I include Juror No. 2?

JUROR NO. 2: Yes.

THE COURT: Very well. The jury is excused and instructed to return to continue deliberations Monday,

October 20, 1975 at ten a.m.

I hope you all feel well and just take care of yourselves. I hope to see you on Monday. Good night, everyone.

[Jury left the courtroom.]

THE COURT: Counsel are excused. I would suggest that you wait five minutes or so to let the jurors leave the floor and leave the courthouse. The status of all concerned shall remain the same. Those defendants who are on bail are instructed to return on Monday at ten o'clock. I expect counsel for all concerned to be here Monday at ten o'clock.

Court is adjourned until Monday, October 20, 1975 at ten a.m.

[Trial adjourned until Monday, October 20, 1975 at ten a.m.]

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UNITED STATES OF AMERICA

- v s - 75 Cr. 229

VICTOR LEONG, et al.

October 20, 1975

[10:00 a.m.]

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THE COURT: Gentlemen, I have a note from the jury. I am advised that the jury has all returned and have resumed their deliberations. I have received a note which will be marked Court Exhibit 9 for identification.

***

[Court Exhibit 9 marked for identification.]

THE COURT: Court Exhibit 9 reads as follows:

"Can we have any exhibits in evidence on Louie Yiu Che from the Government and the defense?

"Second, Government Exhibit in evidence on Victor Leong's George Washington Hotel telephone charges.

"Third, Government Exhibit in evidence on Wong Chou Shek's telephone bills.

"Thank you, Alexander Santa Croce."

Would you get those exhibits together, gentlemen, and once you have agreed upon them we will put the exhibits into the record and send them into the jury.

[Pause.]

THE COURT: Gentlemen, I have received in hand

from counsel the various exhibits. I would note that the jury request relates to the defendants Louie Yiu Che, Victor Leong and Wong Chou Shek. I note that Mr. Olsen is not in the courtroom at this time. His counsel, Mr. Katcher, is.

Mr. Katcher, are you in a position in view of the note, which does not relate to your client, to waive his non-appearance?

MR. KATCHER: Yes, the appearance of Mr. Olsen is waived. The note apparently does not affect his rights. There is no objection whatsoever.

THE COURT: Thank you, Mr. Katcher.

I will direct the marshal to take the following exhibits into the jury room: Government Exhibits 49, 66 and 67 in evidence and, in addition, the defendant Louie's Exhibit A in evidence, which are the following portions of the trial transcript: Pages 1155, Line 11 to Page 1156, Line 14.

Is that agreeable to all counsel?

MR. KATCHER: Agreeable, your Honor.

MR. KAUFMAN: Yes.

MR. KEEGAN: Yes.

MR. SINGER: Yes .

THE COURT: Very well.

Let the record reflect that Mr. Hartmann has stepped out of the courtroom to make a copy of defendant Louie's Exhibit A. As soon as he returns to the courtroom, marshal, you will then take all of the material into the jury room.

[Pause.]

THE COURT: Let the record reflect that Mr. Hartmann has returned with Defendant Louie's Exhibit A.

Marshal, I now hand you Defendant Louie's Exhibit A in evidence.

Is there anything further, gentlemen, before the marshal takes the exhibits into the jury?

MR. HARTMANN: No, your Honor.

THE COURT: Thank you.

[Recess.]

[In the robing room:]

THE COURT: Gentlemen, I have received a note from the jury which I will ask Miss Kruger to mark as the next Court Exhibit.

[Court Exhibit 10 marked for identification.]

THE COURT: Court Exhibit 10 reads as follows:

"Can we have Government Exhibit in evidence on Victor Leong's George Washington Hotel registry?"

There is a second part to it:

"Lam's two telephone numbers at Queens and his restaurant's number and all telephone bills in evidence.

"Thank you, Alexander Santa Croce."

Gentlemen, I propose to do the following: I propose to send into the jury Government Exhibits 45, 46 and 47 in evidence together with the following note:

"October 20, 1975, 11:35 a.m.

"Members of the jury, in response to your most recent note, the only testimony regarding Lam's telephone numbers was Lam's Flushing residence, 212 - 479 - 9555, Lam's Port Washington residence." And I made a mistake and wrote the word "residence" and struck it out and over it I wrote "restaurant, 516 - 8883 - 1766. You already have all the telephone bills which are in evidence. Judge Ward."

Is that satisfactory?

MR. SINGER: Yes.

MR. HARTMANN: Yes.

MR. KAUFMAN: Yes.

MR. KEEGAN: Yes.

THE COURT: Thank you.

[Recess.]

[At the side bar:]

THE COURT: I received the following note from

the jury and I have asked Miss Kruger to mark it as Court Exhibit 11 for identification.

***

[Court Exhibit 11 marked for identification.]

THE COURT: Court Exhibit 11 for identification reads as follows:

"All exhibits in evidence for Wong's defense.

"Thank you, Alexander Santa Croce."

Please get those exhibits.

[Pause.]

THE COURT: Have you gentlemen agreed upon the exhibits which have been requested?

MR. SINGER: Yes, your Honor, as far as I know it is defendant Wong's Exhibits E, I, J and K.

THE COURT: Do you agree with that?

MR. KAUFMAN: Yes, your Honor.

MR. SINGER: I don't believe that there are any others, but I don't have any list.

THE COURT: Let me look.

[Pause.]

THE COURT: Gentlemen, I am going to send into the jury Defendant Wong's Exhibits E, I, J and K, all of which are in evidence.

Do you agree that this responds to the jury's most recent note?

MR. SINGER: Yes, I do, your Honor.

MR. KEEGAN: Yes.

MR. HARTMAN: Yes.

MR. KATCHER: No objection in behalf of the defendant Olsen, your Honor.

THE COURT: Thank you, gentlemen.

[In open court:]

THE COURT: I direct the marshal to take those exhibits into the jury.

[Recess.]

[Jury present at 4:35 p.m.]

THE COURT: I have been advised by the marshal that the jury has reached a verdict. Mr. Kruger, would you take the roll of the jurors and ascertain if all jurors are present?

[Jury roll taken; all jurors present.]

THE CLERK: Mr. Foreman, has the jury agreed upon a verdict as to all four defendants?

THE FOREMAN: Yes.

THE CLERK: Mr. Foreman, what is your verdict regarding Victor Leong on Count 1, guilty or not guilty?

THE FOREMAN: Guilty.

THE CLERK: On Count 6?

THE FOREMAN: Guilty.

THE CLERK: What is your verdict to Ernst Olsen on Count 1?

THE FOREMAN: Guilty.

THE CLERK: Count 2?

THE FOREMAN: Guilty.

THE CLERK: Count 11?

THE FOREMAN: Guilty.

THE CLERK: Count 14?

THE FOREMAN: Guilty.

THE CLERK: As to the defendant Wong Chou Shek, Count 1?

THE FOREMAN: Guilty.

THE CLERK: As to the defendant Louie Yiu Che, Count 1?

THE FOREMAN: Not guilty.

THE COURT: Thank you, Mr. Santa Croce.

THE CLERK: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded, you say you find the defendant Victor Leong guilty on Counts 1 and 6; the defendant Ernst Olsen guilty on Counts 1, 2, 11 and 14; the defendant Wong ChouShek guilty on Count 1; and the defendant Louie Yiu Che not guilty, and so say you all.

THE COURT: Is there a request that the jury be polled?

MR. KEEGAN: Yes, your Honor, in behalf of Leong, Olsen and Wong.

THE COURT: Very well. Is there any request by the Government as to the defendant Louie that the jury be polled?

MR. KAUFMAN: No, your Honor, we make no request.

THE COURT: I think it would be appropriate to restate the verdict as delivered and then have Miss Kruger ask each of the jurors whether that is their verdict, but if you want it done separately by defendant, we will do it that way. Which do you prefer?

MR. KEEGAN: I would prefer the jury be asked separately as to each defendant.

THE COURT: All right, we will poll the jury three times. We will poll the jury relative to Mr. Leong, Mr. Olsen and Mr. Wong. We will not poll the jury as to Mr. Louie.

THE CLERK: As to the defendant Leong, the jury finds him guilty on Count 1 and Count 6.

[In response to the question, "Is that your verdict?" all jurors answered in the affirmative.]

THE CLERK: As to the defendant Olsen, as your verdict now stands you say you find the defendant guilty on Counts 1, 2, 11 and 14.

[In answer to the question, "Is that your verdict?" all jurors answered in the affirmative.]

THE CLERK: As your verdict now stands as to the defendant Wong Chou Shek, you find the defendant guilty on Count 1.

[In answer to the question, "Is that your verdict?" all jurors answered in the affirmative.]

THE CLERK: So say you all.

THE COURT: Anything further, gentlemen, before the Court discharges the jury?

Ladies and gentlemen, the Foreman has handed me the verdict form and I note that the verdict form is identical with the verdict as it stands recorded.

I will ask Miss Kruger to enter the verdict form as the next Court exhibit.

[Court Exhibit 12 marked for identification.]

THE COURT: Ladies and gentlemen, we have been together since September 23. I have bade you good morning, good afternoon and good evening and as I say good night to you it will be for the last time on this stint of your jury service. I never tell the jury whether I agree or disagree with that jury's verdict because that is your province, as I have said several times, but I do comment from time to time on the manner in which the jury carried

out its duties.

From the day you were impaneled until the moment you entered the jury box this afternoon you, together with the four alternates who served with you until you began your deliberations, were in my judgment a singularly diligent group of men and women. You were here through good weather and bad, every day on time, a matter which was not lost on this Court. As a matter of fact, I made a comment to that effect relative to this jury to the jury that has just been impaneled in a case to sit today. As you know, we have more than one case. But each of you not only were physically here every day every minute but you paid close attention to lengthy examinations, cross-examinations and to the presentation of the documentary evidence. This was attested to in my opinion by the notes which you sent out which requested certain specific items of proof as you were going along in your deliberations, and I think the length of your deliberations over a period of three days gives testimony to the fact that you considered this important case to be an important case to the Government and to the defendants.

I can only comment from here that I thank this jury for its diligence in fulfilling the duties of citizenship which I believe most important. In this Court's

view we could not administer justice the way we do were it not for the participation of the citizens in our community.

I want to take this occasion, before I discharge you , to tell you that you are discharged with the thanks of the Court and to remind you if there is any requirement that I follow up with any employer who has doubts about where you have been these last several weeks or if I can be of service to you in a similar regard, you have only to call. I thank you, each and every one of you, and I wish you good luck and good health.

[Jury discharged.]

THE COURT: At this time the Court discharges the defendant Louie Yiu Che. I direct that a judgment of acquittal be entered by virtue of the jury's verdict of not guilty on the record of this Court.

Is there anything further, Mr. Kaufman, relative to Mr. Louie Yiu Che?

MR. KAUFMAN: I don't think so.

THE COURT: Mr. Hartmann?

MR. HARTMANN: Thank you, your Honor.

THE COURT: Is there bail which is presently outstanding for Mr. Louie Yiu Che?

MR. HARTMANN: I believe there is a personal

recognizance bond in the amount of $10,000. I will ask that that be exonerated.

MR. KAUFMAN: I'm not sure of the exact amount. Whatever it is, the Government has no objection to its exoneration.

THE COURT: The Court directs that the personal recognizance bond which is outstanding for Mr. Louie Yiu Che be exonerated. If there are any papers which are necessary to be prepared and submitted, Mr. Hartmann, if you will submit those papers the Court is prepared to sign them.

MR. HARTMANN: Thank you.

THE COURT: You may leave.

MR. HARTMANN: Thank you, your Honor.

THE COURT: The jury having rendered a verdict of guilty as to Victor Leong, Ernst Olsen and Wong Chou Shek, I believe that a pre-sentence report would be in order as to those three named defendants. Do all counsel agree?

MR. SINGER: Yes, your Honor.

MR. KEEGAN: Yes.

THE COURT: At this time I believe it would be appropriate to set a date for sentencing.

Gentlemen, I would propose that the following dates be set for sentence in Room 506 on Tuesday, November

18, 1975: Mr. Olsen at 9:30, Mr. Leong at 9:45 and Mr. Wong Chou Shek at ten o'clock.

At this time we turn to the status of the three defendants. I believe with reference to Mr. Olsen, he is already in custody and serving a sentence which was affirmed last week by the Court of Appeals.

MR. KATCHER: That is correct.

THE COURT: So that Mr. Olsen is remanded.

Attorney for Mr. Leong, what is his status?

MR. KEEGAN: Mr. Leong is presently released on $19,000 bail, reduced from $20,000 at my request to give him $1,000 to live on during the period of the trial.

I request that he remain enlarged on that bail until the day of sentence.

THE COURT: Mr. Kaufman?

MR. KAUFMAN: The Government opposes that application, your Honor, and the Government would request that bail at this time be revoked and the defendant be remanded.

THE COURT: In view of all of the circumstances, including the fact that Mr. Leong has no roots here, although he appeared regularly at his trial, the Court feels that the fact of the jury having rendered a verdict so that he is now convicted of serious crimes bearing severe sentences could very well cause him to determine that the $19,000

bail which is about the maximum he could have put up anyway, as I recall it --

MR. KAUFMAN: It was.

THE COURT: -- that that bail would not be adequate. Accordingly, in view of the Court's belief that the defendant has no roots in this community, the seriousness of the charges and the fact of the conviction, the Court revokes the defendant's bail and he is remanded.

We turn now to the defendant Wong Chou Shek.

MR. SINGER: Yes, your Honor. With respect to Mr. Wong Chou Shek, he is on a present bail of $150,000 under the provisions of 314(6)(E). I would request on his behalf that he be allowed to maintain that bail as presently posted.

I realize that it is apparently the policy of the U. S. Attorney's Office in this District to request a remand of the defendant after a conviction upon the charges herein. I might indicate to the Court -- I'm certain it is well aware of the fact that the defendant on this bail made all appearances. The fact is that he does have a family with four children and a wife in San Francisco and due to the fact of the unusual circumstances of this particular case, the taking of the depositions, Mr. Wong had to come here some time before the trial began. Mr.

Wong was in the process of selling his business and the business is still in the process of being sold at the time he came East. He was requested to be here somewhat earlier, as I say, than the beginning of the trial.

At this time those matters are still pending and at present his attorneys in San Francisco need him to execute papers in that regard.

Further, his family, due to the fact that there is a possibility of incarceration as a result of this conviction in this case, has had tc relocate itself from the area where the restaurant was, the business was, and they have now moved some 60 miles away. He has not been home since that relocation because of the fact that he came here two weeks prior to the commencement of the trial.

I would request that Mr. Wong be allowed to return to complete his business arrangements and in order to make arrangements for his family, his wife and his four children. His wife will need assistance in making those arrangements.

I think the bail set is rather substantial and he has made all of the appearances requested. I really do not feel that he presents the same kind of flight risk due to the fact that he does have roots in the United States. He has been here in the United States for some years now.

He has ties and relatives in the United States and because of the unusual circumstances of having to come here to New York he was unable to prepare for this possible eventuality. I think it certainly comes as a shock to him, but I am certain it does not come as a surprise and I think that under those circumstances I would request that he be enlarged on the bail presently posted.

THE COURT: Mr. Kaufman.

MR. KAUFMAN: The Government would again oppose that and request that bail be revoked and the defendant be remanded. As your Honor has observed, once a defendant is convicted his motive to flee increases many times. The defendant has no roots in the Southern District of New York and I'm not sure that even if the defendant was allowed to remain out on bail that the Government could agree to bail limits to the extent of San Francisco, which, as I understand it, is the reason for the motion that he be continued on bail.

The Government's position is that there does not seem to be any substantial appellate issue in this case and in view of all the circumstances I ask that he be remanded.

MR. SINGER: The limitations of the bail have to be the San Francisco area and I might also indicate

that Mr. Wong came here voluntarily and at the Court's direction and I think that whether or not there are substantial appellate issues, I believe that there are some appellate issues and at this time there is not a request for leave to appeal. This is a request pending sentence. It will be necessary for him, your Honor, to be in the San Francisco area in order for probation to prepare the pre-sentence report.

MR. KAUFMAN: Your Honor, is the defendant's bail $150,000 cash or surety or is it some combination?

MR. SINGER: A combination of the posted bond and --

MR. KAUFMAN: I would like to inquire as to how much of that is cash and how much of that is bond.

MR. SINGER: Originally the bail was 10 per cent on $15,000. Then there was $7,500 posted, a reduction your Honor allowed in order for him to have some finances because he has become indigent during the pendency of this case and I think there is an affidavit on file.

MR. KAUFMAN: It is the Government's position that if the total amount of cash bail was only $7,500 that that is not substantial at all in view of the conviction. The Government renews its application for a remand, but if there is going to be bail set the Government would

request a minimum of $50,000 cash or surety with respect to this defendant.

With respect to preparing a pre-sentence report, the defendant does not have to be in San Francisco. It can be done from here, your Honor.

It is the application of the Government that the defendant be remanded.

MR. SINGER: As to the first request for $50,000 surety, Mr. Wong's relative would be willing to sign as surety on the bail as presently posted. However, the surety bond would be an additional expense of $5,000 and under the circumstances perhaps it would be more appropriate, if that is your feeling, perhaps, to have additional surety. I think that she is sufficiently capable of securing that bond.

THE COURT: If I were to consider a $50,000 bond that has been suggested I would insist that it be cash or surety. I would not go along with a bond either signed by the defendant or even co-signed by another member of his family.

Under the circumstances, if you indicated that there is no reasonable likelihood of the defendant being able to raise $50,000 in cash or surety bond, I suggest that what I will do is revoke his present bail, which I

do deem inadequate, and remand him.

However, you can explore the possibility of posting a $50,000 cash or surety bond and all I can tell you at this stage is that I would consider any application which you make for bail when you know better what you can do.

MR. SINGER: Might I suggest since I am myself returning to San Francisco that your Honor set bail at $50,000 cash or surety at the present time and we will attempt to make that. In the event we are unable to do so I will make further application to the Court which would probably necessitate my returning to the Court. That is why I request that your Honor set the bail at the present time with the understanding that I would attempt to make it and if not I will make further motion.

I understand that under the Bail Reform Act I would have to return for further bail in any event.

MR. KAUFMAN: It is the Government's position that the defendant should be remanded. That is what the Government's application is. If Mr. Singer can come in with an amount that he can make, then that application can be made. It is the Government's position that the defendant be remanded.

THE COURT: The defendant Wong's bail is revoked

and the defendant is remanded.

MR. SINGER: I might request that you set bail at $50,000. It is just the logistics of the problem and if I could get to a bondsman perhaps --

THE COURT: If you want bail set now I will set it in the amount of $150,000 cash or surety. I suggest that you would probably be better off leaving the matter as it is to see if you can raise $50,000 because I would not just go along with it. The Government has opposed it. I do believe that bail is appropriate. You mentioned $150,000 and I as I listened thought to myself: Well, that is certainly reasonable if it is properly secured. It would appear that it is not by any stretch fully secured and therefore I will give you two choices: No. 1, I will set his bail at $150,000 cash or surety today, or, No. 2, I will have the record reflect that bail is revoked and the defendant remanded and give you the opportunity to make a further application.

MR. SINGER: I think further application will be appropriate. There is no possibility as far as I know that he can make that kind of bail. I think there may be the possibility of the other and I will investigate that.

THE COURT: We can deal with that when you have ascertained the fact. I certainly will listen to you,

but I don't want to tell you at this time that I will agree or not agree and it may well be that as time goes on, as the pre-sentence report is developed, my own views will change one way or the other.

So that under the circumstances as to Mr. Wong, the Court's ruling that his bail is revoked and he is remanded will stand.

Is there anything further, gentlemen?

MR. KEEGAN: May we make our motions at the time of sentence, your Honor?

MR. KATCHER: I join in that application.

MR. SINGER: Yes, your Honor, so do I. May I also enter the same application on behalf of the defendant Wong.

MR. KAUFMAN: If there is going to be any extended legal argument on any point I ask that defense counsel submit papers to the Government a few days ahead of time so we may be able to respond.

THE COURT: I would suggest that you serve and file your papers one week prior to the date of the sentence. Is that agreeable to all?

MR. KATCHER: I will make every effort to do that, your Honor, in behalf of the defendant Olsen.

THE COURT: Very well. We are now at October 20

and I set the sentences down for November 18 and I suggest that papers be served and filed by November 11 at five p.m. If the United States Attorney's Office is closed because it is Armistice Day, I would ask the papers be served no later than November 12 at noon.

MR. KAUFMAN: We will be here on the 11th.

THE COURT: Serve the papers, gentlemen, on November 11 at five p.m. Serve them upon the U. S. Attorney and file your papers with the Court.

I would ask that the Government have their papers to the Court -- could you have them by the end of the day Friday, November 14 or would you require that weekend?

MR. KAUFMAN: Not knowing what the motions are, your Honor, it seems to me we should be able to do it by the 14th. If the motions are more substantial, I expect I may request the weekend.

THE COURT: Let me give it to you now. In other words, I would ask that you have your papers to me by the latest -- if you get them earlier I should appreciate it -- but by the latest, November 17 at five p.m. I will be in Part 1. On Tuesday it is my recollection that the calendar either starts at 10 or 10:30, so that if there is to be extended argument we will probably have to put the argument on in the morning or later in the afternoon of

that day, but I would ask that you be here on Tuesday, November 18. I suggest that you all be here at 9:30 on that morning in Room 506. Agreeable?

MR. KAUFMAN: Yes.

THE COURT: Anything further?

The case, having been concluded, I would like to state before I adjourn Court that this case was exceedingly well presented by Mr. Kaufman and Mr. Flannery on behalf of the Government and was ably defended by all four counsel. One has now retreated behind the Bar. The others remain at the defense table. Three of you were assigned counsel and the fourth of you, I'm sure, will not see a profit from his labors in this case, but all of you worked hard in the best tradition of the Bar. You defended your clients vigorously and you leave here respected for it.

Court is adjourned.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : Indictment No. 75 Cr. 229

-vs.- : NOTICE OF MOTION

VICTOR LEONG, et al., :

Defendants. :

----------x

S I R S :

PLEASE TAKE NOTICE that upon the annexed affirmation of Henry J. Boitel, of counsel to David V. Keegan, Attorney for the defendant Victor Leong, the undersigned will move this Court on November 18, 1975, at 10:00 a.m. of the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order:

(1) Granting the defendant an evidentiary hearing at which the government will be obliged to establish that evidence seized from premises under the dominion or control of the defendant, and heretofore suppressed by this Court, did not lead to further evidence which was adduced at the instant trial;

(2) Granting the defendant an evidentiary hearing at which the government will be obliged to establish that electronic surveillance of premises or telephones under the defendant's dominion or control, or of the defendant's own conversations, did not lead to the production of evidence which was adduced at the instant trial;

(3) Granting the defendant a new trial, pursuant to Rule 33 of the Federal Rules of Criminal Procedure, or, in the alternative, granting the defendant a judgment of acquittal, pursuant to Rule 29 of the Federal Rules of Criminal Procedure or, in the alternative, arrest of judgment pursuant to Rule 34 of the Federal Rules of Criminal Procedure, upon the grounds that:

(a) There was a fatal variance between the indictment and the proof, since the trial evidence established the existence of multiple conspiracies;

(b) The government wrongfully elicited excessively cumulative evidence which deprived the defendant of a fair trial;

(c) The government wrongfully elicited evidence concerning the importation of narcotic drugs from Asia to Canada, such conduct not being criminal under the laws of the United States;

(d) The government failed to establish proper venue, with respect to the defendant Leong, within the Southern District of New York;

(e) The prosecutor violated due process of law and the defendant's privilege against self-incrimination when, in summation, he called upon defense counsel to answer various questions with respect to the proof;

(f) The government adduced at trial the fruits of illegally seized evidence as described in items (1) and (2)

of this notice of motion;

(g) Various errors were committed at trial, which deprived the defendant of due process of law and of his right to a fair trial by virtue of the individual and cumulative effect of various other errors at trial.

Yours, etc.

JOHN V. KEEGAN
Attorney for Defendant
Victor Leong
1000 Franklin Avenue
Garden City, New York 11530
(516) 248-1860

Of Counsel:

HENRY J. BOITEL
233 Broadway
New York, New York 10007
(212) RE 2-8104

New York, New York
November 11, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : Indictment No. 75 Cr. 229 (RJW)

-vs.- :

AFFIRMATION

VICTOR LEONG, et al., :

Defendants. :

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HENRY J. BOITEL, being an attorney duly admitted to practice law in the Courts of the State of New York, affirms the following to be true under penalties of perjury, pursuant to Rule 2106 CPLR:

1. I am of counsel to David V. Keegan, attorney for the defendant Victor Leong, and, at the request of Mr. Keegan I make this affirmation in support of the instant motions for post-trial relief.

Request for Hearing with Respect To Evidence Derived from Illegal Seizure and Illegal Electronic Surveillance

2. At the instant trial, this Court conducted a suppression hearing with respect to evidence seized by the Royal Canadian Mounted Police from a hotel room of the defendant Leong in Canada (Tr. 1848-1907). That hearing disclosed both the fact of a physical search of the defendant's hotel room and the implantation of an electronic listening device which, respectively, resulted in the seizure of physical and conversational

1340-1 (2d Cir., 1974), the Court said:

> "In view of the frequency with which the single conspiracy versus multiple conspiracies claim is being raised on appeals before this Court *** we take this occasion to caution the government with respect to future prosecutions that it may be unnecessarily exposing itself to reversal by continuing the indictment format reflected in this case. While it is obviously impractical and inefficient to try conspiracy cases one defendant at a time, it has become all too common for the government to bring indictments against a dozen or more defendants and endeavor to force as many of them as possible to trial in the same proceeding on the claim of a single conspiracy when the criminal acts could be more reasonably regarded as two or more conspiracies, perhaps with a link at the top. Little time was saved by the government having prosecuted the offenses here involved in one rather than two conspiracy trials. On the contrary, many serious problems were created at the trial level, including the inevitable debate about the single conspiracy charge, which can prove seriously detrimental to the government itself.***"

5. In the present case, the government out did it self by attempting to establish that the defendant's alleged purchase of a half pound of narcotic drug made him part of a global conspiracy which allegedly trafficked in hundreds of pounds of various types of narcotic drugs. In view of the extraordinary length and range of evidence adduced at the present trial, all of which presented an overwhelming aura of illicit drug traffic, it must be concluded that the "spill over" effect was decisive as against the defendant Leong. Had he been tried solely upon those activities in which he was allegedly involved, there was at least a reasonable likelihood that he would have

been acquitted. In view of its putrid source, the jury might well have disbelieved the testimony of Lam Kin Sang concerning the limited nature of his alleged dealings with the defendant. United States v. Jenkins, 496 F. 2d 57, 70 (2d Cir., 1974); Kotteakos v. United States, 328 U.S. 750 (1945); United States v. Weiss, 491 F. 2d 460, 467 (2d Cir., 1974); United States v. Kaufman, 453 F. 2d 306, 311 (2d Cir., 1971); United States v. Gaines, 460 F. 2d 177, 178-180 (2d Cir., 1972); United States v. Sperling, supra.

6. It is respectfully submitted that the government's proof at trial established multiple conspiracies, thus constituting a variance between the indictment and the proof and requiring a dismissal of the charge or, in the alternative, a new trial. In this connection, it is also urged that, for the same reasons, the defendant was entitled to a severance from the other trial defendants and he was entitled to a severance of counts of the indictment so as to limit the issues at trial to those events with which he could properly be connected.

Excessively Cumulative Evidence

7. It has frequently been held that lengthy trials which are the result of cumulative, although relevant and admissible, evidence, may result in such unfairness to a defendant as to be violative of his right to a fair trial. As was stated by Mr. Justice Cardozo in Shepard v. United States, 290 U.S. 96, 105 (1933): "When the risk of confusion is so great as to upset

the balance of advantage, the evidence goes out." See also: United States v. Costello, 221 F. 2d 668 (2d Cir., 1955), aff'd. 350 U.S. 359 (1956); International Shoe Mach. Corp. v. United States Mach. Corp., 315 F. 2d 449, 459 (1st Cir.), cert. denied, 375 U.S. 820 (1963); Wigmore on Evidence (3d Ed.), § 7907. It is respectfully submitted that the government's evidence in the present case was so unnecessarily cumulative, with respect to the conspiracy of which the defendant Leong was, allegedly, a part, that it deprived him of his right to a fair trial.

Canadian Branch of Conspiracy

8. This Court will recall that, at the instant trial, the government adduced substantial evidence with respect to the passage of narcotic drugs from Asia to Canada. The drugs in question were not shown to have passed to or through the United States. It is respectfully submitted that the existence of such drug traffic did not constitute a crime against the United States, and was not properly a part of the proof with respect to a conspiracy violative of the laws of the United States. The introduction of such evidence could only have had the effect of fragmenting the issues and facts to an extent which confused and overwhelmed the trial jury.

Venue

9. Defendant has been convicted of a conspiracy charged in Count I and of the substantive crime charged in Count VI of the indictment. Overt Act No. 20 alleges that the

defendant received 250 grams of heroin from Lam Kin Sang in New York, New York. Count VI alleges that the defendant "In the Southern District of New York" possessed, with intent to distribute, the same 250 grams of heroin.

10. During the course of jury deliberations, the jury requested "All government's evidence on Victor Leong; date and place on Count VI." (Tr. 2369; Gov. Ex. No. 7). It was then realized that the government had never established that the defendant Leong allegedly received and possessed the drug in the Southern District of New York, and defense counsel immediately moved for a judgment of acquittal based upon that failure of proof. When confronted with this defect in the proof, government counsel argued "I think there is circumstantial evidence on it, if you read the full context of the initial meeting [of Lam Kin Sang] with Victor Leong starting at page 758.***" It is respectfully submitted that there was no circumstantial proof of venue within the Southern District of New York. Moreover, all of the inferences from the circumstantial evidence should be drawn in favor of the defendant since the government had ample opportunity to elicit from its own witness clear and direct evidence of proper venue.

11. When the existence of the problem became clear, this Court noted to defense counsel:

> "In the first instance, Mr. Keegan, I am going to leave the matter for the jury's determination. The jury's verdict on the subject may make our discussion

> academic. It seems to me that if, as, and when they convict on this count you may want to renew your motion. I think that would probably be more appropriate."

12. Lack of venue is a jurisdictional defect. United States v. Gross, 276 F. 2d 816, 819 (2d Cir., 1960); United States v. Grossman, 400 F. 2d 951 (4th Cir., 1968). Failure to prove venue taints the indictment, makes it defective and requires its dismissal. United States v. Bink, 74 F. Supp. 604, 608 (D.C.D. Ore., 1947); United States v. Bozza, 365 F. 2d 206 (2d Cir., 1966). See also: Comments of Mr. Justice Frankfurter in United States v. Johnson, 323 U.S. 273, 275 (1944).

13. Since the government failed to establish venue in the Southern District of New York, and since the possession of the heroin in question was a critical aspect of the government's proof both as to the conspiracy and substantive count, the jury verdict should be set aside and the indictment should be dismissed as against the defendant Leong.

Prosecutor's Comments in Summation

14. In accordance with the current practice, the prosecutor was the first to deliver his summation to the jury. He utilized that summation as a vehicle to compel comment by the defense to the jury with respect to various facts in issue:

> "When Mr. Keegan argues that to you ask him in your own mind this question: if Lam is going to lie about Victor Leong, why didn't Lam implicate Victor Leong in the San Francisco transaction?" (Tr. 2136)

* * *

> "If you are going to lie about someone, why not try to make one sound as bad as possible? But Lam didn't do that. Ask Mr. Keegan why." (Tr. 2136)

* * *

> "If and when any defense counsel argues that to you when they sum up, ask them in your mind why this inconsistency is present in the testimony." (Tr. 2140).

15. Then, in rebuttal, the prosecutor taxed defense counsel for not answering the prosecutor's questions:

> "I also suggest to you that Mr. Keegan never answered the question I posed to him and to you when I first talked to you this morning, and that question was, if Lam Kin Sang is getting on the stand and lying about everything, if he is testifying and trying to implicate Victor Leong in an attempt to get himself out of jail, why did Lam Kin Sang say he only sold a half pound of heroin to Victor Leong?" (Tr. 2247-8).

16. Rule 29.1 F.R.Cr.P. permits, but does not require, the defense to make any closing argument whatsoever. It is respectfully submitted that a requirement that the defense make a closing argument to the jury would be violative of the Fifth Amendment prohibition against compulsory self-incrimination. When the prosecutor put questions, in his summation, to defense counsel, he was doing no less than attempting to question the defendant through the defendant's representative. Then, in rebuttal, the prosecutor faulted the defense for not responding to his questions. That combination of tactics constituted a violation of the defendant's privilege against self-incrimination and a comment upon the failure of the defense to express itself. For that reason;

the defendant's rights to due process and against self-incrimination, were violated, and he should be granted a new trial.

Other Errors

17. The defendant hereby reasserts each of the legal arguments, objections and exceptions made at trial.

Respectfully submitted,

HENRY J. BOITEL

New York, New York
November 11, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-v-

VICTOR LEONG and
WONG CHOU SHEK,

Defendants.

---

STATE OF NEW YORK )
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

AFFIDAVIT

75 Cr. 229 (RJW)

ALAN R. KAUFMAN, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Thomas J. Cahill, United States Attorney for the Southern District of New York, and I am in charge of the prosecution of this case. I make this affidavit in response to the omnibus motions of Victor Leong and Wong Chou Shek seeking post- conviction relief.

A. Taint Hearing

2. At the trial, the Government sought to introduce into evidence certain documents, most notably a personal telephone book, seized from Victor Leong in Vancouver, British Columbia on June 10, 1972. After a hearing in which the seizing officer, Harry Wallace of the Royal Canadian Mounted Police, testified*, the Court granted

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* Sergeant Wallace testified that the seizures were legal under Canadian law, pursuant to the Writ of Assistance. (Tr. 1851-54, 1857, 1872-73).

Leong's motion to suppress the seized documents, stating:

> "The Court finds that sometime between April and June of 1972, the Canadian authorities had communications with Agent Logan of the Drug Enforcement Administration regarding certain narcotics transactions which involved, among other people, Victor Leong.
>
> "The Court finds there is no direct evidence that American agents suggested either the June 10, 1972 search or the events which might be called [the] 'plan' for that search.
>
> * * * *
>
> "It would appear to the Court that there was a close working relationship in the period May and June 1972, between the Canadian authorities and the American authorities, including the exchanges of names, information, and at least one photograph which appears to have been obtained during an earlier search.
>
> "The Court finds that the cooperation between agents of the Canadian and American Governments was substantial as to duration, and also was substantial as to the information exchanged back and forth between law enforcement officials of the two governments.
>
> "The Court has reached the following conclusions:
>
> "Although the search did not take place at the specific direction of the American authorities, the search directly resulted from a joint venture in which agents of the United States Government had a substantial participation." (Tr. 1912-1913).

3. Leong now claims that it is necessary to conduct a hearing to determine if the evidence that the Government introduced at trial against him -- the testimony of Lam Kin Kong -- was obtained as a result of the improperly seized material that the Court suppressed.

4. The Government submits that the Court's suppression of the material seized in Vancouver does not give rise to this issue of taint. Leong submits that the issue of taint is relevant to determine whether the seized material led the Government to the witness Lam Kin Sang; if so, Leong asserts that the exclusionary rule would result in the further suppression of Lam's testimony. Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920).

5. Leong's claim is without merit. The purpose of the exclusionary rule is to deter law enforcement officials from engaging in conduct which violates individuals' constitutional rights. Weeks v. United States, 232 U.S. 383 (1913); Bruley v. United States, 383 F.2d 345, 348 (9th Cir.). cert. denied, 389 U.S. 906 (1967). Nothing in the record and nothing in the Court's ruling suppressing the material seized in Vancouver indicates that United States officials engaged in any conduct the repetition of which should be deterred by invoking the exclusionary rule. Indeed the Court's ruling makes clear that United States officials did not engage in any improper conduct at all:

> "The Court finds there is no direct evidence that American agents suggested either the June 10, 1972 search or the events which might be called [the] 'plan' for that search." (Tr. 1912).

The fact that American agents worked in close harmony with their counterparts in Canada cannot be subject to criticism. Indeed, if an American agent ignored intelligence information received from a foreign law enforcement agency

concerning a suspected narcotics violator who had possible American connections, that agent would properly be viewed as being derelict in his duty.

6. Since the Court found no unconstitutional or improper conduct on the part of American officials, the purposes underlying the exclusionary rule would not be furthered by its invocation. Cf. United States v. Walsh, 455 F.2d 211, 213 (2d Cir. 1972).

7. The Government anticipates Leong's response to the foregoing to be that the Court must have found some impropriety in the American agents' involvement in the Vancouver seizure since the Court suppressed the seized material. The Government submits that in view of the fact that the Court's ruling expressly disavowed any finding of any such impropriety, the ruling was in actuality an exercise of the inherent discretion of the Court as the final arbiter of the admissibility of evidence. United States v. Gottfried, 165 F.2d 360, 367 (2d Cir.), cert. denied, 333 U.S. 860 (1948). In exercising discretion in such matters, the Court must consider a variety of variables, not just the lawfulness of a seizure. Considerations such as relevancy, authenticity, and a weighing of prejudice against probity all affect the admissibility of evidence. In the instant case, the Government submits that the Court ruled the seized materials to be inadmissible because of the underlying circumstances attendant the seizure, most notably the existence of a bug in



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Leong's hotel room.* Evidence held inadmissible by the Court in the exercise of its discretion does not give rise to taint hearings or the utilization of the exclusionary rule on information or evidence derived from such inadmissible evidence.

8. Assuming arguendo that Lam's testimony would be subject to exclusion if tainted by the Vancouver seizure, it is still unnecessary to conduct a hearing since the record of the trial expressly sets forth the facts of Lam's becoming a Government witness. Those facts have nothing whatsoever to do with the Vancouver seizure.

9. On Lam's cross-examination, Ernest Olsen's counsel explored Lam's attempts to have his sentence reduced, and when it was that Lam decided to cooperate:

> " Q. How after you lost your appeal did your lawyer or you yourself make any application to the Court that imposed a sentence on you seeking a reduction of that 15 year term?
>
> " A. Before I lost the appeal he had already tried to apply for the sentence reduction. At that time I have already decided to cooperate with the Government because I knew that Wong Shing Kong was cooperating with the Government." (Tr. 904).**

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* The bug was purely a Canadian intrusion, with no American involvement.

** On Mr. Katchen's motion, this answer was stricken. For purposes of deciding the issue of whether the trial record obviated the need for a taint hearing, it is submitted that the answer can be considered.

Cross-examination continued:

" Q. When you made up your mind to cooperate with the Government you were already serving time in prison, were you not?

" A. Yes, sir.

" Q. And it was in prison that you heard that Stanley Wong was working with the Government?

" A. I knew he was cooperating.

" A. Was that at the same time that you were making the application to have your sentence reduced?

" A. Yes.

" Q. And how did you obtain the information that Stanley Wong was cooperating with the Government?

" A. Thomsen and I were in the same prison and also my attorney had known about this thing.

" Q. And was that when you asked your wife to communicate with the United States Attorney that you wanted to cooperate with them?

" A. Yes.

" Q. And did someone come to visit you at the prison?

" A. No.

" Q. Were you taken somewhere to talk about your area of cooperation?

" A. They took me to Washington.

" Q. That is after your wife had communicated with the U. S. Attorney; is that correct?

" A. Yes." (Tr. 955-56).

After the luncheon recess, Mr. Kutcher continued this line:

" Q. Mr. Lam, how soon after you were sentenced to serve your fifteen year term did you decide to cooperate with the Government?

" A. About seven or eight months.

" Q. When did you first ask your wife to visit someone in the United States Attorney's office?

" A. In October.

" Q. When were you sentenced?

" A. In April I was contenced.

" Q. What year?

" A. '73

* * * *

" Q. Did you see someone in the U. S. Attorney's office in the Southern District of New York two or three weeks after your conviction in the case of cooperation?

" A. Yes.

" Q. Was that after you spoke to your wife and asked her to talk to the U. S. Attorney?

" A. That was about eight months later.

" Q. You spoke to your wife eight months after you were sentenced about your wanting to cooperate, is that correct?

" A. Yes.

" Q. Did you go to the United States Attorney's office two or three weeks after your conviction?

" A. Yes.

" Q. Do you recall who you spoke with?

"A. Barbara Kaplan.

" Q. Was she the Assistant U. S. Attorney who prosecuted your case which resulted in your conviction?

" A. Yes.

" Q. Did you at that time give her any information in the case of your alleged cooperation?

" A. No, at that time I did not cooperate.

" Q. How much time did you spend with Miss Kenna at that time before they sent you off to prison?

" A. She asked me whether I wanted to cooperate and I said no; that's all.

* * * *

" A. When for the very first time after your wife communicated in some fashion with the U. S. Attorney's office did anyone on behalf of the Government come to visit you while you were in jail?

" A. A month or two later."

(Tr. 959, 965-66, 967).

10. The foregoing clearly demonstrates that Lam Kin Seng's cooperation with the Government was the result of his own initiative -- that after turning down a Government offer that he cooperate just after his conviction, Lam, about six months later, changed his mind and sent his wife to inform the Government that he wanted to cooperate.

11. Again assuming arguendo that taint is in issue, the criterion is "whether granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation

of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." Wong Sun v. United States, 371 U.S. 471, 488 (1962). As the foregoing has demonstrated, since Lam's cooperation was clearly not obtained as a result of any lead that the seized material could have provided, but was totally independent of such material, Lam's testimony was free of taint and not suppressible. Cf., Nardone v. United States, 308 U.S. 338 (1939); United States v. Knohlberg, 434 F.2d 585, 587 (2d Cir. 1970), cert. denied, 401 U.S. 939 (1971).

B. Single vs. Multiple Conspiracies

12. Leong and Wong Chou Shak allege that the Government's proof demonstrated the existence of a number of separate conspiracies, rather than the single one charged in the indictment. This claim is absolutely without merit.

13. The Government's proof at trial demonstrated a classic single conspiracy to traffic in narcotics, in which the full gamut of participants was identified, ranging from the source of the heroin in Bangkok; his associate who found North American distributors; the smugglers who actually brought the heroin from Bangkok back to the United States and Canada; the distributors in New York, San Francisco, and Vancouver; the associates and couriers for those distributors; and ultimately the distributors' customers. All 25 defendants indicted, plus the 15 co-conspirators, fitted within one of the above categories.

Regarding the four defendants who went to trial, Ernest Olsen was the chief smuggler; Wong Chou Sing was the San Francisco distributor; Louis Yin Cho was a San Francisco customer, and Victor Leong was a customer of the New York distributor with aspirations of distributing in Vancouver. They were all part of one organization, the purpose of which was to traffic in heroin.

14. This case is totally unlike the facts depicted in United States v. Bertoletti, Dkt. No. 75-1107 (2d Cir., November 10, 1975), the very recent case in which the Court of Appeals followed its warning in United States v. Sperling, 506 F.2d 1323, 1340-1341 (2d Cir. 1974) and found multiple conspiracies. In Bertoletti, the Court found four separate, distinct and unrelated narcotics transactions (some of which were in reality cash and narcotic rip-offs), only one of which "resembled the orthodox business operation we have found to exist in narcotics conspiracies." Slip op. at 6418. The Court found that the transactions" could hardly be attributed to any real organization, even a loose-knit one," and that there was no evidence which revealed "what could seriously be called 'a regular business on a steady basis.'" Slip op. at 6419.

15. The facts at trial showed one well-organized business operation, the purpose of which was to import massive quantities of pure heroin into North America and there to distribute it. With such a factual pattern, this Circuit has held on numerous occasions that one conspiracy

existed. United States v. Ortega Alvarez, 506 F.2d 455, 457 (2d Cir. 1974), cert. denied, U.S. (1975); United States v. Arroyo, 494 F.2d 1315, 1319 (2d Cir.), cert. denied 419 U.S. 827 (1974); United States v. Brown, 485 F.2d 490 (2d Cir. 1973), vacated and remanded on other grounds, 417 U.S. 903 (1974); United States v. Agnesi, 310 F.2d 817 (2d Cir. 1962), cert. denied, 372 U.S. 959 (1963). Indeed, this Circuit has found a single conspiracy in cases with less compelling fact patterns as in the instant case. United States v. Tramunti, 513 F.2d 1087 (2d Cir. 1975), cert. denied, 44 U.S.L.W. 3201 (Oct. 6, 1975) and United States v. Mallah, 503 F.2d 971 (2d Cir. 1974), cert. denied, 420 U.S. 995 (1975).

16. Leong claims that his purchase of a 1/2 pound of heroin from the New York distributor was not sufficient to connect him to the retail conspiracy. If that constituted the entirety of the Government's case, Leong's argument possibly could have some merit. However, Leong ignores the proof that he told Lam that he would purchase more heroin after he resold the 1/2 pound, that he told him that he was going to try to distribute the heroin in Vancouver, and that Leong caused Lam to come to Vancouver in an attempt to sell heroin to a customer that Leong had located there.

17. Leong and Wong Chou Shak further claim that their comparatively "limited" participation was blotted out by the Government's proof of the "global" conspiracy, and

that had they been tried alone, they stood a reasonable chance of being acquitted. This argument ignores the fact that the Court specifically instructed the jury to consider each defendant individually, and the evidence against them separately (Tr. 2291, 2292, 2302-03, 2331, 2334), and indeed, that is what the jury did, as evidenced by its inquiries during deliberations. (See jury's notes marked as court exhibits, Tr. 2368, 2369, 2377, 2385, 2387 re Leong and Tr. 2353, 2385, 2389 re Wong Chew).

18. Leong and Wong Chew appear to complain that the Government proved its case too well by the use of cumulative evidence, and therefore they did not receive a fair trial. Obviously, this is absurd. Their reference to Shepard v. United States, 290 U.S. 96, 105 (1933), pertains to evidence which though admissible, confuses a jury. The defendants have not pointed to any evidence at trial which could have led to the jury's being confused as to what their roles were in the conspiracy. Indeed, in its deliberations, as previously noted, the jury specifically and seemingly very carefully considered each defendant separately and sifted the evidence as it pertained to each.

C. Venue

19. Leong was charged in Count 6 of the indictment with possessing with intent to distribute 250 grams (1/2 pound) of heroin in the Southern District of New York. The jury, in the course of its deliberations requested the date and place of the transaction charged in Count 6 (Tr. 2369-70). In trying to comply with the jury's request,



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Leong's counsel and the prosecutor reviewed the record, at which time Leong moved for a judgment of acquittal on Count 6 on the ground that the Government failed to prove that the transaction occurred in the Southern District of New York.

20. The record on this point, during the direct-examination of Lam Kin Sang, reveals:

" Q. After Lee Louie, did you sell drugs to anyone else?

" A. Yes.

" Q. To whom?

" A. Victor Leong.

* * * *

"Q. How did you know Victor Leong?

" A. I met him in the gambling house vicinity.

" Q. Can you identify him?

" A. I recognize him.

" Q. Is he in the courtroom today?

" A. Yes, he is here.

" Q. Would you please point him out?

" A. One, two, three, the fourth one.

THE COURT: Sitting at the table?

THE WITNESS: Yes.

THE COURT: Indicating Mr. Leong.

" Q. When you met with Victor Leong in New York, where did this meeting occur?

" A. Inside the gambling house.

" Q. Which gambling house?

" A. Tung On gambling house.

" Q. About when did this meeting occur?

" A. In the month of September.

" Q. Do you recall when in the month of September, approximately?

" A. In the middle of September.

" Q. Is that also 1971?

" A. Yes.

" Q. Was anybody else present at the time of this meeting?

" A. Yes, they were talking themselves. They couldn't hear us.

* * * *

" Q. Did you have a conversation at that time?

" A. Yes.

" Q. What did you say and what did Victor Leong say, to the best of your recollection?

" A. I told him that I have some white powder here and would he look for somebody to buy them.

" Q. What, if anything, did he say?

" A. He said, Fine.

" Q. What else was said?

" A. Later on he agreed to buy half a pound from me.

" Q. For how much?

" A. $2,000.

" Q. Did there come a time when you gave him half a pound?

" A. Yes.

" Q. Did he pay for it when you gave it to him?

" A. At that time he did not pay.

" Q. Did you have a conversation at that time?

" A. Yes.

" Q. What did you say and what did he say in that conversation?

" A. He said that he would sell it first and then would give me the money.

" Q. Did he say where he would sell it?

MR. [redacted]: Objection to the leading your Honor.

THE COURT: Yes.
What, if anything else, did he say?

THE WITNESS: He said he would take it back to Vancouver to sell.

" Q. Do you recall where Leong was staying while he was here in New York?

" A. In the same hotel that Olsen was in.

MR. KEUCHER: Objection, your Honor, to that part of the answer, the same hotel that Olsen stayed in.

If he knows the hotel, let him give us the name rather than identify it with Olsen.

THE COURT: You were asked what hotel, and I assume the hotel has a name. What is the name of the hotel?

THE WITNESS: George Washington Hotel.

" Q. How do you know he was staying there?

" A. Because on and off I have contact with him through telephone.

" Q. Did there come a time when he paid for the half pound?

" A. About a week or two later he gave me some money.

" Q. Did he pay you all he owed you?

" A. No.

" Q. When Mr. Leong paid, did you have any conversation with him at that time?

" A. He said after he sold the rest of it, he will give me the money."
(Tr. 758-762).

21. From the foregoing, Leong argues that the Government failed to prove venue in the Southern District of New York, and that since venue is a jurisdictional defect, the conviction must be reversed and the indictment dismissed. This argument is wrong both on the facts and on the law.*

22. First, the Government need only prove venue by a preponderance of the evidence, not beyond a reasonable doubt. United States v. Jenkins, 510 F.2d 495, 497-498 (2d Cir. 1975). When viewed by that standard, and in light of the fact that venue can be established by

* The most glaring error is the claim that the indictment must be dismissed against Leong. Leong was convicted on the conspiracy count, as well as the substantive count, and even if the Government's proof showed that Leong bought the 1/2 pound elsewhere than the Southern District of New York, the conspiracy conviction would still stand because Leong was part of a single conspiracy in which other overt acts occurred in the Southern District of New York. Moreover, the Government's proof clearly showed that Leong negotiated for heroin in the Southern District of New York.

circumstantial evidence, the Government clearly satisfied its burden. United States v. Jenkins, supra; United States v. Haley, 500 F.2d 302, 305 (8th Cir. 1974); Conley v. United States, 355 F.2d 175, 176 (5th Cir. 1966); Holdridge v. United States, 282 F.2d 302, 305 (8th Cir. 1960), (Blackmun, J.).

23. The Government submits that the testimony at trial established venue in the Southern District of New York when judged by the above standard. Lam Kin Seng testified that all his early sales of heroin took place in clubs in the Southern District of New York (3 one-pound sales to Lee Louie), that he met Victor Leong in a club in the Southern District of New York in mid-September and they discussed Leong's purchase of 1/2 pound of heroin, that shortly thereafter Lam gave Leong the 1/2 pound, and that thereafter Lam had telephone conversations with Leong at Leong's hotel in the Southern District of New York. The Government submits that the foregoing is sufficient circumstantial evidence to find that Leong actually received the heroin in the club. Moreover, the fact that Leong was staying in a hotel in the Southern District of New York after he received the heroin is circumstantial evidence that the hotel is where he kept the heroin after he received it from Lam, even if he had received it somewhere else.

24. Moreover, and perhaps most importantly, Leong waived his venue objection. This Circuit and others have ruled that any venue objection is waived

"when, after the Government has concluded its case, the defendant specifies grounds for acquittal but is silent as to venue." United States v. Prior, 447 F.2d 23, 27 (2d Cir.), cert. denied, 404 U.S. 912 (1971). See also, Gilbert v. United States, 359 F.2d 285 (9th Cir.), cert. denied, 385 U.S. 882 (1966); United States v. Polin, 323 F.2d 549 (3d Cir. 1963). In the instant case, as in Prior, Leong moved for a directed judgment of acquittal when the Government rested. He specified as his grounds that the evidence "was insufficient to submit the case to the jury, and that the mind of no reasonable juror could conclude guilt beyond a reasonable doubt on the case the Government has presented." (Tr. 2095-6). That motion was renewed at the close of all the evidence. (Tr. 2121). Leong did not specify venue as one of the grounds. Accordingly, Leong waived any venue objection.

D. Summation

25. Leong and Wong Chou Shek make the novel argument, unsupported by any authority, that the prosecutor violated their Fifth Amendment right against self-incrimination and commented on their failure to testify when, in the opening summation, the prosecutor invited defense counsel to respond to portions of the Government's evidence and argument and then in closing summation pointed out their failure to adequately respond. Leong asserts that when "the prosecutor puts questions, in his summation, to defense counsel, he was doing no less than attempting to



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question the defendant through the defendant's representative." This is absurd. What the prosecutor did was to attack the defense that Leong's counsel first mentioned in his opening statement to the jury (Tr. 78-84) and thereafter had already tried to establish in his cross-examination of Lam Kin Seng: that Lam was lying in order to get out of jail. In the prosecutor's opening summation, he pointed out the reasons why it made no sense for Lam to lie; to wit, that if Lam was going to lie, he would have expanded Leong's involvement over-and-above a purchaser of 1/2 pound of heroin. Since Leong's defense was clearly the credibility of Lam, the Government had the right to make appropriate arguments and to challenge that defense. That was all that the prosecutor did. To equate that with an attempt to question the defendant is ridiculous.

26. Wong Chou Shek asserts that the prosecutor's comment in rebuttal about Wong Chou's lawyer failing to answer a point originally raised on the opening summation amounted to a comment on the defendant's failure to take the stand. This is equally absurd. All the prosecutor did was point out that Wong Chou's counsel, in trying to minimize Agent Leong's testimony, conveniently omitted the most telling part of that testimony, to wit, the observations of Wong Chou driving Pun Yau Wing to the banks. (Tr. 2260-61). That was simply appropriate comment on the evidence, and conforms to the purpose of rebuttal

ARK:art

summation which is to answer the arguments raised by the defense.*

27. Lastly, to the extent that the defendants contend that the prosecutor's opening summation forced them to sum up, it must be observed that during the latter stage of the trial, the Court informed all concerned of what the order of summations was to be, and at no time did any defense counsel ever indicate the possibility that he would waive a summation. (Tr. 2120, 2126). In fact, during off-the-record discussions, the Court asked all counsel for their estimates on the length of their summations, and all counsel stated the time each felt he required.

WHEREFORE, it is respectfully submitted that the motions of Victor Leong and Wong Chou Shek be denied in all respects.

ALAN R. KAUFMAN
Assistant United States Attorney

Sworn to before me this
15th day of December, 1975

JEANETTE ANN GRAVES
Notary Public, State of New York
No. 24-4[illegible]
Qualified in Kings County
Commission Expires March 30, 1977

* Neither Leong nor Wong Chou objected at trial to the portions of the Government's summations of which they now complain.

rqb

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | : | |
| vs. | : | 75 Cr. 229 |
| VICTOR LEONG, a/k/a FOON CHOY LEONG | : | |
| Defendant. | : | |

New York, New York.
December 16, 1975 - 11:30 A.M.

Before:

HONORABLE ROBERT J. WARD, District Judge.

APPEARANCES:

THOMAS J. CAHILL, United States Attorney for the Southern District of New York
ALAN R. KAUFMAN,
JOHN FLANNERY,
ANGUS MAC BETH, Assistant United States Attorneys.

HENRY J. BOITEL, ESQ.,
Attorney for defendant.

SHIRLEY MOY, Chinese Interpreter.

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(Case called.)

MR. KAUFMAN: The Government is ready.

MR. BOITEL: The defendant is ready, your Honor.

THE COURT: Mr. Boitel, I would first hear you on the motions which you made on behalf of Mr. Leong, and then assuming that it is appropriate to go forward, we would then proceed with the matter of sentencing.

MR. BOITEL: Thank you, your Honor.

The first motion relates to certain materials that were seized from a hotel room of the defendant Leong in Canada by the Canadian authorities, and to certain electronic surveillance of the defendant Leong that was conducted by Canadian authorities, all in Canada.

The Court, during the court of the trial, as is indicated from the transcript, conducted a hearing with respect to the propriety of those activities, the relationship of American officials to those activities, and the ultimate question of the admissibility of any evidence which was in fact seized.

In examining the transcript, I find that the Court, at page 1913 of the record, concluded as follows after hearing it.

THE COURT: I know what I concluded. I know everything that is in the record. I have read your

papers.

Now, if you want to add anything, go right ahead, but don't repeat either what I said and did at the trial, of which I am well aware, or what you said in your papers, which I have read.

MR. BOITEL: Thank you, your Honor. I suppose what I was doing was in a sense attempting to address myself to the Government's reply.

THE COURT: Go right ahead if you think that that will help you. I want to hear you on that.

MR. BOITEL: Which I received yesterday afternoon.

The Government places a great deal of emphasis upon the claim that your Honor in declaring the evidence which resulted from those seizures not to be admissible at the defendant's trial did not find impropriety on the part of American officials.

However, your Honor did find at the page of the record which I previously indicated that there was a joint venture in which agents of the United States Government had a substantial participation, that is with respect to the seizure of that evidence. That being so, I respectfully submit that since the evidence itself was suppressed, any fruits that may have been derived from it should also have been suppressed.

The Government characterizes the papers which I have submitted as indicating that we are alleging that that evidence led to the discovery of the witness Lam Kim Sang, and that in fact that was not the case; that Lam Kim Sang, for independent reasons, determined to assist the Government. Well, in fact in the papers I requested a hearing to determine whether those seizures either caused or induced or aided the Government or Lam Kim Sang in making its case against the defendant Leong.

I think under the classic cases with respect to suppression of evidence, of which I am sure your Honor is well familiar, the issue is not whether the actual evidence seized may be used against a defendant, but any fruits, as I say, derived therefrom.

THE COURT: What do you call it, the Won Sung Doctrine?

MR. BOITEL: Yes, sir.

THE COURT: Very well.

MR. BOITEL: Now, my examination of the transcript failes to indicate any evidentiary hearing, any indication one way or the other as to whether the Government did derive any such assistance as a result of those seizures.

THE COURT: Your examination, I am sure, also reflects that there was no request made before your motion

was made, is that correct?

MR. BOITEL: Yes, sir. It certainly does. I am fully aware that this motion is being made post-trial. However, it may well be that if your Honor does convene a hearing of this type it may be determined that the Government could not have made its case against this defendant, which is really essentially a single witness case, were it not for the fuirts of those seizures.

In that event it may be necessary to dismiss this indictment, there would not be a need for a new trial.

In any event, being fully aware of the fact the motion was not previously made, I now make it through these papers and I respectfully request your Honor to exercise your discretion and entertain it.

I think, as a footnote to that, that the Government itself, once your Honor declared the evidence to be inadmissible, had an affirmative obligation to come forward if it was aware of any derivative evidence.

Now, the Government's papers, as I read them, do not specifically state that there was no derivative evidence. They talk more in terms of the discovery of that witness or the determination of that witness to become a Government witness.

So I think at some point the Government

ought make clear before this Court whether there was any derivative evidence. I think they had that obligation at trial and I think that obligation continues.

Would your Honor wish me to proceed to other issues?

THE COURT: Oh, yes, I want you to cover everything because you have other applications beyond the request that an evidentiary hearing be granted, of which frankly I take a dim view because I don't think you have made the requisite showing, and also because I have a question, at least, as to whether it is timely.

I think you can pass quickly by your fatal variance argument relative to the indictment and your proof. I am firm in my view that there was one conspiracy and I charged the jury on the subject.

My recollection is that portion of the charge was not excepted to.

MR. BOITEL: I believe that is correct.

THE COURT: But I will certainly hear you on that.

I recognize also your excessive evidence-severance argument which has been presented heretofore, and I was rather interested in your venue argument because of some subjects that had been discussed at trial, and

I was interested in the Government's response to it. I think you might want to devote a moment or two to that. I really don't see anything with your final argument relative to the prosecutor's summation.

To my recollection no exception was made to it at the time which might have permitted me to cure whatever defects you allege existed.

I will hear you on anything else and then I will hear the Government.

MR. BOITEL: Then in view of your Honor's comments I will touch briefly on this actual trilogy of points concerning multiple conspiracy, cumulative evidence and the Canadian aspect of this conspiracy, and I will talk for a moment on the Canadian aspect. I don't believe the Government touched the problem which I raised in my papers, and that is the fact that the Government at trial attempted to prove a conspiracy not only to import materials into the United States, but also into Canada.

Importation of controlled substances, that is under the American law, into Canada is, of course, not a violation of American law, and I think the defendant --

THE COURT: No, but selling them up there and having the sellers operate here in the United States and

continue to import into the United States, there is no question that the transactions facilitated the continuation of the conspiracy to import heroin into the United STatees and, therefore, I think that the evidence was properly admissible.

I will certainly hear you further on that subject.

MR. BOITEL: My recollection of the evidence is that there were several transactions testified to at trial which related to importation from outside the United States and Canada to Canada, not having anything to do with the United States except perhaps that some of the people involved in that importation were also involved in importation into the United States.

The material that went to Canada did not come to the United States or did not come through the United States in several instances, and of course this likewise flings us back to the multiple conspiracy argument, because in a sense the Government has gone further than the normal multiple conspiracy case, it has brought in conspiracies having nothing to do with violations of law of the United States. This was, I am sure, for many involved, probably for everyone involved, a difficult trial. There were many separate instances that were

testified to.

We had the added difficulty of the numerous foreign names and aliases and it may well have been difficult for the jury to keep track of where all the evidence was going to this particular defendant with respect to the fact that there was something Canadian involved, even though he was not involved in it himself, it added a particular prejudice because he is Canadian.

In any event, I think I made my point on that issue.

With respect to the venue argument, the Government argues that the poi was not adequately preserved at the time of trial, that is that it was waived.

Well, traditionally we define waiver as the voluntary relinquishment of a known right. I am satisfied and the Court can be satisfied that Mr. Leon did not voluntarily relinquish anything here or knowingly relinquish anything.

The issue came up in response to a rather perceptive question on the part of certain of the jurors or all the jurors, and at that point your Honor indicated it might be appropriate to raise it post-trial.

The Government had its witness on the stand. Unlike the number of other cases which the Government

cites it could very well have addressed specific questions to that witness and received specific responses. Instead it asked generalized questions, received generalized responses, not pinpointing the critical activity to the Southern District of New York.

There is set forth in the Government's papers, I guess at pages 13 through 16, the examination of the particular witness involved, Lam Kim Sang, and even with respect to where a particular conversation was held concerning an agreement, at the bottom of page 14 of the Government's papers, the witness is asked:

"Q What else was said?

"A Later on he agreed to buy a half pound from me."

Now we are coming to a critical aspect of the Government's proof, but where did that "later on" occur?

Can we presume in view of this witness' particular testimony that they had conversations in various places at various times? Can we presume that that conversation later on took place in the Southern District of New York? Certainly you can't presume that the transfer itself took place in the Southern District of New York.

The Government had the capacity and the ability

to direct its questions specifically to the witness and it did not do so.

I say under those circumstances any inferences that are to be drawn circumstantially should certainly be drawn in favor of the defendant and not in favor of the Government.

To the extent, as I submit, that the evidence does not establish with any degree of reliability where the critical activities occurred with respect to this defendant, there was a failure of venue here and the verdict of the jury with respect to, certainly the substantive count, should be set aside and the Court should enter a judgment of acquittal.

I think with respect to the conspiracy count on that same issue, the defendant was similarly prejudiced, but perhaps not to the same extent because as we realized, it is not necessary for every defendant in a conspiracy case to commit an act within the jurisdiction.

However, by being burdened with defending against that particular act wherever it might have occurred, the defendant, I respectfully submit, was probably prejudiced on the conspiracy issue.

To that extent the defendant should be granted a new trial as to the conspiracy.

I think that is the substance of what I have to say on the venue argument.

As to the issue of summation, I realize the point is rather novel. I am not going to press it. I think at the very least -- I do ask, I make no bones about it, I am arguing that there was a Fifth Amendment violation here, a due process violation, but at the very least I think some sort of ground rules ought to be set with respect to what the Government can or cannot do under our new procedure.

THE COURT: Didn't I charge the jury, and I don't have my charge in front of me at the moment, unfortunately, that the Government had the burden of proof, that the defendant is presumed innocent, that the defendant didn't have to do anything, and that nothing should be assumed or presumed from any defendants not having testified?

MR. BOITEL: Your Honor, yes, you certainly did.

THE COURT: When you add that to the lack of an objection, I suggest that the argument which you deem novel, to a great extent evaporates.

MR. BOITEL: I am attempting to gain some support from cases with which your Honor is, I am sure,

aware there has been some objection, there has been some error pertaining to the defendant's Fifth Amendment right and the Court have nonetheless entertained the issue presented as involving plain error.

In any event, I would respectfully so submit. I think essentially that concludes my presentation. Of course I would reassert any objections or exceptions that were taken during the course of the trial.

I suggest individually and cumulatively the issues which I have spoken about and which were raised at trial either require that one or both counts be the subject of verdicts of acquittal or, in the alternative, that the defendant be granted a new trial.

THE COURT: Thank you, Mr. Boitel.

Mr. Kaufman.

MR. KAUFMAN: Thank you, your Honor.

With respect to the taint issue, your Honor, that Mr. Boitel urges the Government had an affirmative obligation to state whether there was any derivative source from the Vancouver seizure, since defense counsel raised that problem during the trial, I don't think it is fair that the Government be required to be clairvoyant as to what counsel will raise some time in the future after trial.

I don't believe there is any affirmative obligation on the part of the Government to make such an assertion.

In any event, I am willing to state on the record as far as I know there was no derivative source. I believe that the record of the trial fully sets forth how Lam Kim Sang became a Government witness. Quite frankly, I am at a loss to understand Mr. Boitel's argument there.

My reading of his papers indicates the only taint issue is whether or not the seizure in Vancouver led the Government to the witness Lam Kim Sang, because as Mr. Boitel correctly points out in his own papers, there was indeed practically no other evidence against Mr. Leong at the trial, except for Lam Kim Sang, so the only thing that could have been obtained was Lam Kim Sang and the Government submits that Lam's testimony fully sets forth how he became a Government witness.

I will be perfectly glad to tell Mr. Boitel that he did not become a Government witness because of any knowledge gained in Vancouver and the Government also rests on his argument that from your Honor's own decision of keeping out that Vancouver material, the Government submits it was not the type of activity that requires the invocation of the exclusionary rule because the Government

maintains that the agents did not do anything which need be deterred in the future, and that is the purpose of the exclusionary rule.

I don't believe it is necessary to linger on this single conspiracy argument. I believe this case sets forth practically the ultimate in a single conspiracy with one well-organized group dealing in narcotics.

The fact that there was proof about transactions which occurred in Canada did not detract from that in any way because while the substantive transactions occurring between Bangkok and Vancouver could obviously not be charged as a crime in the United States, it was still a part of the same overall conspiracy involving one of the defendants on trial, Ernst Olsen, and clearly admissible on that issue.

Turning to the venue issue, the Government believes it set forth its position fairly well in the papers, but to go over it, Number 1, the standard on venue is preponderance of the evidence, not beyond a reasonable doubt.

The jury was charged that they had to find venue beyond a reasonable doubt, and indeed they so found, but the standard is not that high.

The Government submits that the proof that

was adduced meets that standard since circumstantial evidence can satisfy the standard we are dealing with that due to the fact that all of Lam's early transactions, early sales, clearly occurred in the gambling club in the Southern District of New York; that he first met Victor Leong at the gambling club that while Lam was not asked right out where did you hand Victor Leong the half pound of heroin, the whole train of that testimony indicated that it was occurring at the same place.

When you couple that with the fact that Lam testified that Victor Leong was staying at the George Washington Hotel here in Manhattan and was here in the George Washington Hotel after the transaction, the Government submits that the conclusion is inescapable and certainly conforms to the standard that we are dealing with, that even if Leong got that half pound somewhere else, in Queens or Brooklyn, that since he was staying in the George Washington Hotel and since he was not a New Yorker, but indeed from Vancouver, that logic dictates that he had the heroin at the hotel where he was until he left for Vancouver.

The Government similarly relies on its arguments in its papers as to the waiver issues. The Price case seems to the Government to be right on point, that when defendant's counsel at the close of Government's proof

moves for a verdict of acquittal on specific grounds, in this case that the evidence was insufficient to enable the jury to find that Victor Leong did what the Government accused him of doing and is not specific as to venue, that that constitutes a waiver.

Other than that, your Honor, I will respond to any question thatyou may have.

THE COURT: Thank you. The Court notes that throughout these proceedings Shirley Moy has been sitting with Mr. Leong and has been interpreting for him.

I don't recall that Miss Moy was sworn today, although she was sworn previously. Perhaps we will do it at this time and then I will ask a couple of questions.

(Shirley Moy was duly sworn as official Chinese interpreter.)

THE COURT: Miss Moy, you served at the trial of this case, is that correct?

THE INTERPRETER: Yes, your Honor.

THE COURT: I noted that when counsel began you were seated at the table with Mr. Leong. Have you truly and completely interpreted all of the proceedings which have heretofore been had this morning to Mr. Leong?

THE INTERPRETER: Yes, your Honor.

THE COURT: Mr. Boitel, is there any need that we go back over this or do you accept the fact that the interpreter who has just been sworn has been interpreting all of the proceedings up to this point fully and completely for Mr. Leong?

MR. BOITEL: I fully accept it and she is doing so at the request of myself and Mr. Leong, I should note for the record.

THE COURT: Thank you. It was my oversight in not directing that Miss Moy be sworn previously.

I know her and I know of her competence, so that with my observations, together with your statement, I think that at this point we need not go back, but we can go forward.

The Court is prepared to render a decision on the motions of the defendant Victor Leong.

MR. BOITEL: May I make a brief comment, your Honor?

THE COURT: Yes.

MR. BOITEL: Just so that I can crystallize the point because sometimes these things become a spin-out and become a little vague and then when you try to argue them later there is some problem raised.

With respect to the seizures in Canada and

what they may have been used for, I would like to just express to the Court a bit of analogy.

If the Government engaged here in wiretapping which was illegal and if they independently came upon a witness, and if they then used that wiretapping to refresh the witness' recollection, with or without his knowledge that that is the way they derived their information, then the witness becomes tainted.

Now, what I am suggesting is not only are the seizures in Canada and the electronic surveillance may have led to this witness, and I have said that in my papers and it is not just that, it may have been used directly or indirectly to assist him in bringing his testimony, whatever testimony it was that he gave, here to this courtroom.

That is why in my papers I use the very specific expression, and that is "I am asking for an evidentiary hearing for the purpose of determining whether the actually seized evidence was directly or indirectly instrumental, this is at page 2, in causing, inducing or aiding Lam Kim Sang to be a Government witness.

So I think now I have made my point. I got the impression that the prosecutors did not fully grasp what my argument was.

THE COURT: Thank you.

MR. BOITEL: I am not in a position to take a representation from the prosecutor based on his knowledge that no such thing occurred because we do not know the extent to which, if any, he has made any investigation into that fact.

As I understand it there were many Government agents who dealt with a particular witness.

THE COURT: The Court is prepared to render a decision on the defendant's motion.

The defendant moves for an evidentiary hearing to require the Government to establish that evidence seized in Canada and heretofore suppressed by this Court did not lead to further evidence which was adduced at the trial.

The Court would note that this application for a hearing was made for the first time in post-trial motions. The matter was fully before counsel at the time of the suppression hearing which was conducted during the trial and could have been raised at that time.

The Court has read counsel's papers and finds them to be insufficient to cause the Court to direct a hearing at this time. Nothing has been presented in these papers of a concrete nature which would lead the

Court to conclude that a hearing would be appropriate.

I find that there is nothing in the record, nothing presented on this motion and nothing in the Court's ruling suppressing the material seized in Vancouver which indicates that United States officials engaged in any conduct the repetition of which would be deterred by invoking the exclusionary rule.

According this branch of the defendant's motions in all respects is denied.

Defendant Leong further moves to dismiss the charges against him on the ground that the Government's proof at trial demonstrated the existence of a numbef of separate conspiracies rather than the single one charged in the indictment.

The Court was conscious of the problem of separate conspiracies and as the evidence unfolded reached the conclusion that it would be appropriate to charge the jury on this matter. The jury was charged on the subject of single and multiple conspiracies and was told that if they found multiple conspiracies they should acquit.

No exception was taken to this portion of the charge and the Court finds that there is sufficient in the record for the jury to have found that there was a

single conspiracy, and accordingly this branch of the defendant's motion is denied.

I turn next to the branch of the defendant's motion on the subject of venue. This is directed primarily to Count 6 of the indictment which charged Mr. Leong with possessing with intent to distribute 250 grams, or one-half pound of heroin in the Southern District of New York.

A review of the evidence has led the Court to conclude that the Government did in fact prove venue by a preponderance of the evidence, which is the required standard. United States vs. Jenkins, 510 F. 2d 495, 497-498, Second Circuit 1970.

Lam Kim Sang, a principal Government witness, testified that all his early sales of heroin took place at locations within the Southern District of New York. I speak in that respect of clubs, and I speak of three one-pound sales of heroin to Lee Louie. Lam Kim Sang further testified that he met Victor Leong in a club in the Southern District of New York in mid-September of 1971, and they discussed Mr. Leong's purchase of one-half pound of heroin; that shortly thereafter Mr. Lam gave Mr. Leong the one-half pound and that after that Mr. Lam had telephone conversations with Mr. Leong while Mr. Leong was staying

at a hotel in the Southern District of New York.

The Court finds that there is sufficient circumstantial evidence in the record for the jury to have found by a preponderance of the evidence that Mr. Leong actually received the one-half pound of heroin in the club in New York.

In addition, as I have noted, it was established that Mr. Leong was staying in a hotel in the Southern District of New York after he received the heroin. I think the inference could fairly be made that that is where he kept the heroin after he received it from Mr. Lam and before he departed from New York.

The Government has indicated that Mr. Leong waived his venue objection.

The law is clear that any venue objection is waived "when after the Government has concluded its case the defendant specifies grounds for acquittal, but is silent as to venue. United States vs. Price, 447F 2d at 23, at 27, (Second Circuit) ceriorari denied 404 U.S. 912 (1971.)"

In the present case,as in Price, Mr. Leong moved for a directed verdict of acquittal after the Government rested. He specified his grounds and omitted specifying venue as one of the grounds.

The Government argues and the Court would agree that assuming arguendo there is insufficient proof of venue in the record, the venue objection was waived by the defendant.

The defendant Leong argues that the prosecutor's summation constituted an improper comment on the defendant's failure to testify. The Court notes that the summation in this respect was delivered without objection and thereafter in its instructions to the jury the Court made clear that the Government had the burden of proving each and every element of the charges against the defendants beyond a reasonable doubt; that the defendants were presumed innocent and that they did not have to present any evidence nor should the jury draw any inference or conclusion from the fact that the defendants did not testify.

There were no exceptions to the charge in this area and I have concluded that this branch of the defendant's motion should be denied.

The Court has considered all of the other matters raised by the defendant both in his written and oral presentations and denies the defendant's motions in all respects. Thos include the written motions as well as oral motions, for a judgment of acquittal, to set aside the verdict and for a new trial.

I shall endorse the written motion papers "motion denied" in accordance with oral decision rendered this date.

It is so ordered.

I have endorsed the papers as indicated.

Mr. Boitel, I note that both Victor Leong and his counsel, his substituted counsel, yourself, are present in court and I would ask you if there is any reason why sentence should not be imposed at this time.

MR. BOITEL: I know of no reason why sentence should not be imposed.

THE COURT: Mr. Leong, is there any reason why sentence should not be imposed?

THE DEFENDANT: No.

THE COURT: Mr. Boitel, I will ask if there is anything you wish to say in Mr. Leong's behalf or any information you wish to present in mitigation of punishment.

MR. BOITEL: Your Honor has previously kindly granted me permission to examine the pre-sentence report in this matter and I did so. As I view that report it is a favorable report with respect to this defendant. The defendant Leong was at trial alleged to have committed the acts alleged here in some four years ago. Prior to that time, as indicated and apparently verified by the

probation department, he has been a hard-working, conscientious individual in many respects. He had his own restaurant, he worked long hours, etc. Subsequent to that time, that is the time which the indictment in this trial is concerned, Mr. Leong was married. His wife Selina is in the courtroom here this morning. I can state from my own knowledge that they are two very close individuals. I know the type of attention and concern she has repeatedly exhibited to me since my involvement in the case, and Mr. Keegan has advised me that there was a similar involvement in his recollection of the case.

THE COURT: My recollection is that she came to New York to be with her husband during the period of his trial.

MR. BOITEL: Yes, sir. Unfortunately, and I know for these two individuals, a very tragic event occurred shortly after the defendant's arrest in this case, Mrs. Leong, who was then expecting a child, suffered a miscarriage.

I am not going to even attempt to argue or suggest that I know why that occurred, but it is a fact which exists in the background of these two people. He is 34 years old today; he was perhaps just turning 30 at the time of these events or in his late twenties. Whatever else

may be said, he is an older and certainly a lot wiser man. He has a set of roots which perhaps he didn't have before so far as his wife is concerned. He has had apparently no criminal record at all other than that which is related to the events of this case.

The probation department indicated that they had had some difficulty with correspondence relating to friends, former employers and relatives of the defendant because of the Canadian postal strike. Some of the letters that had been mailed on his behalf, some of them arrived at my office yesterday afternoon and today.

THE COURT: You have handed them up. In addition I have received other letters which were directed to me and I read each of them and I do note that there are a number of supported letters from people who have known the defendant over a period of time.

MR. BAITEL: Mr. Leong, as I now compute it, has been incarcerated with respect to these charges approximately a year. He was extradited from Canada and then he was held here for several months before he was released on bail at the time of trial, he was released on bail at the time of trial and at the conclusion of trial his bail was terminated.

I think the fact that he is a Canadian

citizen and the fact that when released on bail he had appeared whenever required to do so, and was faithful to the order of the Court, indicates something about the character of the man, as well as I have already indicated his wife's continued presence here with him.

I think for me to go on at any greater length would perhaps be stating more than is really necessary to the Court. I think this Court has had an opportunity to get some understanding of this defendant, the role that was ascribed to him in the course of these proceedings, this trial, certainly there was serious criminal conduct, there is no doubt about that, but however relative to the mark.. of conspiracy, it was minor. One may say without the minor figures, relatively minor figures you can't have major figures. The fact, however, is that there is a difference. In any event, I would ask your Honor, most respectfully, to be as lenient as possible with this defendant.

If possible, to permit him to rejoin his wife with perhaps the time he has served and the hardships they have endured as a result of these charges, and I believe that brings me to my conclusion with respect to my remarks on behalf of my client.

THE COURT: Thank you, Mr. Boitel.

Mr. Leong, is there anything you wish to say in your own behalf or any information you wish to present in mitigation of punishment?

THE DEFENDANT: Your Honor, what I have to say my lawyer already said it for me. There is nothing much for me to say except that I place myself on the mercy of this Court and I ask your Honor to give me a chance to go back to society and my family.

Thank you.

THE COURT: Thank you.

Mr. Kaufman, is there anything you wish to say with reference to Mr. Leong?

MR. KAUFMAN: Just very, very briefly, your Honor. Your Honor will recall the facts against Mr. Leong clearly. His involvement was not of the magnitude of some of the other defendants in this case.

The Government proved that he had purchased a half pound of heroin which he was intending to take to Vancouver to resell. I just want to recall to your Honor's attention that the proof indicated that Leong thereafter wanted to make further purchases of heroin in Vancouver to resell there, but for the fact that Stanley Wong's instructions to his Vancouver people that the only heroin there could go to Bin Hin Low. But for that Victor Leong

would have purchased more heroin and resold it.

THE COURT: Thank you, Mr. Kaufman.

The Court is prepared to impose sentence.

I have before me a man 34 years of age, who is before the Court for sentencing on his conviction on two counts: One, a conspiracy to violate the narcotics laws and (2), the distribution and possession with intent to distribute of one-half pound of heroin.

The charges are serious and they require this Court, in the Court's judgment, to impose a period of confinement. However, the Court's sentence will be mitigated by the fact that this offense marks the only known criminal conviction of the defendant.

On the other side of the ledger we have the purchase of a half pound of heroin, which I have mentioned, and the fact that the defendant has been found by the jury's verdict to have purchased that heroin with the intent of taking it back with him to Vancouver to sell, and that this was not just one transaction, there was discussion with one of the major conspirators of the possible purchase of additional heroin.

There were no further transactions, but nevertheless it appeared to the Court that the defendant was ready and willing to continue to deal in narcotics.

The defendant is married and his wife has been exceedingly supportive of him, both by being at all times during the course of these proceedings and in her very positive statements on his behalf to the probation department. Nevertheless, the Court has concluded that the crimes on which the defendant stands convicted were serious and that a committed sentence is appropriate.

This is the sentence of the Court: It is adjudged that on Count 1 defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of three years to be followed by a special parole term of three years.

It is adjudged that on Count 6 the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of three years, to be followed by a special parole term of three years. Said sentence on Count 6 to run concurrently with sentence on Count 1.

That is the sentence of the Court.

I would note that the defendant is presently in custody and I direct that he continue in custody. He will receive credit against this sentence for all time spent in Federal custody in connection with the offense for which sentence has been imposed.

The defendant has the right to appeal. He is presently represented by Mr. Boitel. He has the right to apply for leave to appeal in forma pauperis, and I advise him of that. He may do so if he is unable to pay the cost of an appeal.

I would request that you, Mr. Boitel, file a notice of appeal for Mr. Leong should he request that an appeal be taken.

MR. BOITEL: Your Honor, may I request, so that the record may be clear, that your Honor grant the defendant credit for some seven months that the defendant was in custody as I understand it, of Canadian authorities, pursuant to extradition proceedings brought by the United States in Canada?

THE COURT: I don't know that I can do that. I have indicated that he is to be given credit toward his sentence for any days spent in Federal custody, and I had in mind custody here in the United States to which you had made reference. I don't know that I can give credit or direct that credit be given for days spent in custody in another country, albeit at the request of United States authorities.

However, I will direct that if such credit can legally be given, since he was in confinement, he is to

be given such credit. However, if it is not legal to give him such credit, that credit will not be given.

MR. BOITEL: Thank you, your Honor.

THE COURT: Is there anything further?

MR. BOITEL: Could your Honor at this time consider an application for bail pending appeal?

THE COURT: You may make it, if you wish.

MR. BOITEL: Yes, I now respectfully move for an order granting appeal bail to the defendant Leong, since he does in fact intend to prosecute and appeal to the United States Court of Appeals for the Second Circuit. I believe that there are certainly arguable issues which can be raised on appeal, and it is my intention to represent him on appeal and I intend to prosecute his appeal expeditiously.

Since the defendant Leong has already demonstrated to this Court at least prior to conviction that he is a good bail risk, and since he does have the type of roots which I have discussed earlier, I think he is a good bail risk and he continues to be based on my discussions with him.

I ask that your Honor set reasonable bail pending appeal.

In that connection I should note that the defend-

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ant was out on bail of some $20,000 --

THE COURT: Reduced to $19,000 and we made allowance for living expenses.

MR. BOITEL: Yes, sir. I believe that figure has probably been further reduced by virtue of the need for living expenses on the part of the defendant's wife, but that with the assistance of friends and relatives an appeal bail can be raised, not twenty, but close to it, or close to 19 that was existing before, and that is my application, your Honor.

THE COURT: What is the dollar amount of your bail application?

MR. BOITEL: I would respectfully request that your Honor grant bail in the sum of $15,000.

THE COURT: Let me hear from the Government.

MR. KAUFMAN: The Government opposes that, your Honor, and requests that he be continued remanded. The man is a Canadian national. The Government feels that there are not any serious appellate questions in this case, and there are especially none on the conspiracy count.

Whatever merit Mr. Boitel thinks there may be on the venue issue, that does not rub off on the conspiracy count.

The Government submits that in order to assure Mr. Leong's continued presence here, he must be continued in a remand status.

THE COURT: The application for bail pending appeal is denied.

The defendant is remanded.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

v. : 75 Cr.229

WONG CHOU SHEK, a/k/a "Ah Wong", :

Defendant. :

- - - - - - - - - - - - - - - - - - - - - - x

December 16, 1975.
12:30 o'clock

Before:

Hon. Robert J. Ward,
District Judge.

Appearances:

THOMAS J. CAHILL, ESQ.,
United States Attorney for the
Southern District of New York
Alan R. Kaufman, Esq.,
John Flannery, Esq.,
Angus MacBeth, Esq.,
Assistant U.S. Attorneys.

JOHN L. POLLAK, ESQ.,
Attorney for defendant.

Shirley Moy, Chinese Interpreter

THE COURT: Miss Kruger, would you call the third and last matter which was scheduled for this morning.

THE CLERK: United States of America v. Wong Chou Shek also known as Ah Wong.

MR. KAUFMAN: The government is ready, your Honor.

MR. POLLAK: The defendant is ready.

THE COURT: I will hear your argument on motions first as I did in the other cases. I would anticipate rendering a decision and then if it is required we will proceed with the matter of sentence.

MR. POLLAK: Your Honor, I am in the sometimes uneviable position of being last to proceed and in view of the fact your Honor has already heard what I consider to be able argument I would adopt that argument with one or two comments with respect to the government's answering papers which we received yesterday and I direct my statements to that portion of the motions which deals with a variance, that is the so-called multiple conspiracy count. Here the government is doing in my opinion what it did in the Sperling case and in the Bertolotti case and that is contending that each of the actors knew that he was a participant in a large scale, business type scheme designed to place narcotics in the hands of the ultimate users. I submit to

your Honor that in view of the Bertolotti decision the government can no longer taken refuge in that catchall decision that they have heretofore used in narcotics cases. That being my comment I would adopt the arguments previously made by Mr. Boytel and as I am sure your Honor has noted our motion papers are similar in many respects and there would be no point in me burdening the record before your Honor.

THE COURT: Very well. I would note before I call upon the government that Miss Moy who was previously sworn is interpreting for Mr. Wong Chou Shek, but since she has heretofore been sworn in connection with her interpreting for Victor Leong it is not necessary for us to reswear her, but I did want the record to reflect that Wong Chou Shek does have the services of Miss Moy as interpreter. Mr. Kaufman.

MR. KAUFMAN: Yes, your Honor. I believe Wong Chou Shek's motions coincide with some of those made by Victor Leong so there is no need for extended comment. Simply on this multiple conspiracy argument, the government anticipates hearing this argument on the basis of the Bertolotti case now in every case where we charge a conspiracy. However, the fact in the Bertolotti case present a fair abhorrent factual pattern which the government

mentioned in its answering papers and there is absolutely nothing in the Bertolotti case that dilutes in any way the validity of the single conspiracy decisions that have come down in the Ortega case, the Arroyo case, the Bynum case and the Agueci case, all cases which are very similar to the fact pattern here, your Honor.

THE COURT: I have found already that there was enough for the jury to conclude on proper instructions that there was a single conspiracy here. It does take a number of witnesses to establish a conspiracy which moves from the poppy fields of Thailand to New York, San Francisco and other places in North America and of necessity the government presents a number of witnesses to explain the process which takes material from foreign growing areas to the large cities of the United States where it is sold. For the reasons set forth in connection with the denial of the motions of the defendant Victor Leong and for the reasons which I have just stated the motion of the defendant Wong Chou Shek is in all respects denied. In addition the court has considered that the defendant has made a timely motion for an acquittal, a judgment of acquittal and to set aside the verdict of the jury and for a new trial. Those motions are in all respects denied. I will endorse the motion papers denied in accordance with

oral decision rendered this date. It is so ordered. I dated this December 16, 1975. I have now signed the endorsement.

The court notes that the defendant Wong Chou Shek and his counsel, John L. Pollak, Esq., who has been substituted for Harry Singer are present in court. Mr. Pollak, is there any reason why sentence should not be imposed at this time?

MR. POLLAK: I know of no such reason, your Honor.

THE COURT: I would ask the defendant, is there any reason you know of why sentence should not be imposed at this time?

THE DEFENDANT: No, your Honor.

THE COURT: Mr. Pollak, is there anything you wish to say in Mr. Wong Chou Shek's behalf or any information you wish to present in mitigation of punishment?

MR. POLLAK: Yes, your Honor.

THE COURT: I will hear you.

MR. POLLAK: Your Honor, the defendant Wong Chou Shek who now stands before your Honor for sentence is an escapee from the People's Republic of China as the court knows. The court has before you a pre-sentence report by the Probation Department, a pre-sentence report which I took the liberty of submitting to your Honor myself on behalf

of the defendant --

THE COURT: And which I read together with numerous supportive letters and one tape. Although I could not understand it I did take the liberty of playing it and followed the translation which was submitted with it.

MR. POLLAK: Thank you. Each of the documents that your Honor has have a common thread throughout them, I think, and that is that the behavior for which Mr. Wong now stands convicted and which took place approximately four years ago over a period of approximately three to four months totally antithetical of Mr. Wong's behavior from his date of birth to today. From the moment he escaped from the Red Army in China in 1950 his life has been dedicated to improving his family's living conditions and welfare while living within the law. From the time he started working an an apprentice in a garment factory in Hong Kong at a rate of $3 a month to the time he opened the furniture shop and then rebuilt that rattan furniture shop in Hong Kong Mr. Wong has strived and continues to strive to improve himself and the lot of his family. From the time he came to the United States in 1957 and began to work as a dishwasher to the day that he opened his own Chinese restaurant in San Francisco with the help of his family and friends, he has clearly and lawfully tried to

upgrade himself and his family in the most credible American tradition. True, a jury has found Mr. Wong guilty of a serious crime and that is undisputed, but I respectfully submit, your Honor, that the one indiscretion that the man has committed in the 45 years of his life, that indiscretion covering three to four months, when weighed against the 45 years of doing good should sway the scales before your Honor toward leniency. I do not ask this court to pin a medical on Mr. Wong. I do not necessarily ask for probation, but what I do ask and what I do suggest to your Honor is that this court in all its compassion weigh Mr. Wong's whole life in meting out the sentence. Thank you, your Honor.

THE COURT: Thank you, Mr. Pollak. At this time the court would inquire if the defendant has anything he wishes to say in his own behalf or any form he wishes to present to the court in mitigation of punishment.

THE DEFENDANT: Your Honor, I would like you to bear in mind that if I have been remanded my family will have a problem because I have to support a family of several people. Please take that into consideration, your Honor.

THE COURT: Is there anything further?

THE DEFENDANT: Your Honor, when I was arrested at that time I was still working in the kitchen in the

kitchen in the restaurant. Before I was arrested I tried to be a good person and I hope that after my arrest I would be a good person and with your help, your Honor, I hope to be a better person. I am at your mercy and your discretion, your Honor. That is all. Thank you.

THE COURT: Mr. Kaufman, do you have any comments or recommendations you wish to make to the court prior to the court's imposing sentence?

MR. KAUFMAN: Yes, your Honor. Again very briefly. As your Honor will recall the behavior of Mr. Wong during that three or four-month stretch that I guess he was following the American dream led him to bring 15 pounds of heroin from New York to San Francisco which he thereafter sold, that's a substantial quanity of heroin in anybody's understanding, your Honor. Moreover, I don't have any particular knowledge about Mr. Wong's own background, but the last I looked gambling was still not legal in California and I believe the testimony at trial indicated that at least during the time period of this conspiracy he was running and operating a gambling house which is not considered the way to better yourself here. Other than that I have nothing to add, your Honor.

MR. POLLAK: Your Honor, if I may briefly comment. I think the probation report as well as the

assertions made by the Probation Department reveal that Mr. Wong has and I am informed has had no prior convictions or arrests and that his only involvement with the law is in connection with the case now pending before your Honor, I am not contradicting that. I am simply stating that the proof here at trial revealed that Mr. Wong Chou Shek ran and operated a gambling house in San Francisco and that is contrary to counsel's assertion to the court that Mr. Wong Chou Shek had never been involved in anything illegal.

THE COURT: Well, so far as I have been able to ascertain he does not have any prior convictions, which is what this court will go by in imposing sentence. I am really only peripherally interested in anything such as has been mentioned here and do not wish to take that into account in connection with the imposition of sentence. Is there anything further, gentlemen, before I proceed?

MR. POLLAK: No, your Honor.

MR. KAUFMAN: No, your Honor.

THE COURT: The court is prepared to impose sentence. I have reviewed not only the pre-sentence report but a report submitted to me by counsel of the defendant under date of December 8, 1975, as well as a number of supportive letters, not only from family, but from friends

of the defendant attesting to the positive reaction of his family and his friends to him. The letters are uniformly supportive. I have before me a defendant, age 45 years, who is before the court for sentencing on his conviction by a jury in this district of conspiracy to violate the narcotics laws. The present conviction is the only conviction known to the court and is the only matter which the court has taken into consideration in determining what sentence to impose. The defendant has at all times maintained his innocence of the charges against him and has expressed the belief that the witnesses against him were pressured into testifying against him by the government. The primary witness against the defendant was Pon You Wing also under charges, if I recall correctly, who testified relative to working for the defendant. Mr. Wing was subjected to thorough cross-examination, his credibility was before the jury. I might add parenthetically that in the case of another defendant who was also accused by Pon You Wing and Lam Kim Sang, and I speak of Louie Yui Che, the jury determined in that instance to acquit, but here after weighing the credibility of the witnesses against the defendant and the additional evidence presented the jury determined to convict. I find that there was sufficient evidence for the case to go to the jury and sufficient

evidence for the jury to have convicted so that the present protestations of innocence must face the jury's verdict which was adverse to the defendant. It would appear that the defendant met people who were involved in narcotics trafficking while he was working in the San Francisco area. It would appear to the court that he concluded that he could supplement his income by trafficking in narcotics and he had over a period of time involved himself as a participant in a very large scale narcotics conspiracy. As the number 15 pounds of heroin was mentioned previously and the court heard testimony to the effect that there was a substantial amount of heroin which was sold to Mr. Wong and those working for him and which ultimately was attempted to be sold in San Francisco. Unfortunately the scheme began to unravel when Pong You Wing, one of Mr. Wong's associates, determined to sell a quantity of narcotics to a young woman, later several young women who turned out to be members of the San Francisco Police Department. The court regards narcotics trafficking on a large scale such as is found here as a very serious offense and has concluded that despite the needs of the defendant's family it is necessary to impose a period of confinement. This is the sentence of the court: It is adjudged that the defendant is hereby committed to the custody of the Attorney

General or his authorized representative for imprisonment for a term of five years to be followed by a special parole term of three years. That is the sentence of the court.

MR. POLLAK: Your Honor, the defendant, Wong Chou Shek intends to appeal and I intend to represent him in said appeal. We intend to expeditiously commence that appeal forthwith. In view of that, your Honor, I would respectfully ask that your Honor grant bail pending appeal.

THE COURT: What amount do you seek?

MR. POLLAK: I seek, your Honor, $50,000 cash or surety.

THE COURT: Mr. Kaufman?

MR. KAUFMAN: The government would oppose bail, your Honor. The government believes that the defendant needs to be maintained in the remand status to assure his continued presence here.

MR. POLLAK: If I might be heard briefly?

THE COURT: The court is prepared to hear you.

MR. POLLAK: As your Honor well knows bail pending appeal is I believe governed by Rule 9 of the Federal Rules of Appellate Procedure which sets forth basically two criteria for the court in granting bail. The first is whether the defendant is a danger to the community. I

think the pre-sentence report, the letters your Honor has with respect to that from his family and the defendant's continued appearance in court when required before he was remanded negate the fact that the defendant would be a danger to the community. The defendant has been a resident, a permanent resident of the United States in the San Francisco area since 1967 and as your Honor indicated earlier has never been convicted of a crime other than the crime pending before your Honor insofar as the second avenue under Rule 9 is concerned, I believe that there are many arguable points of appeal in that the appeal will not be taken for delay or will not be a frivolous appeal. Your Honor spent considerable time this morning discussing those points of law which again I believe to be of some import.

THE COURT: The court fixes bail for the defendant, a long resident of the United States, in the amount of $100,000 cash or surety. The defendant is remanded in lieu of bail. In the event that the defendant is able to post the bail fixed by the court he of course will be entitled to be released and in the event he is released I would permit him to travel to the State of California and to remain there while his appeal is pending and if the conviction is affirmed require that he return here to surrender.

At this time he is remanded, but if bail is posted then he may be released on bail. I would remind him that he will be given credit toward his sentence for any days spent in federal custody in connection with the offense for which sentence has been imposed.

I would remind him of his right to appeal, but since he is represented by competent counsel who has already indicated an intention to appeal I don't know that I need go further. Apparently counsel has been retained so I will not instruct the defendant other than to say he does have the right to apply for leave to appeal in forma pauperis if he is unable to certify the cost of an appeal and I would anticipate, Mr. Pollak, from what you have said that you will file a timely notice of appeal for him.

MR. POLLAK: I so intend, your Honor, there is one last matter so that we can clear up the record. When the defendant was arrested in San Francisco he posted $7,500 in cash. I would ask that at this time that bail be exonerated so that his family would have the benefit of that money.

THE COURT: I think that would be appropriate and a new bail would have to be put up in order to make the bail which the court has fixed. Does the government have any objection to the exoneration of the prior bail the court

having set new bail?

MR. KAUFMAN: No, your Honor.

THE COURT: Very well, that may be done. The court orders that the prior bail which has been posted and appears still to be posted exonerated and may be returned to the defendant and in the event he is able to make the new bail fixed he will post the new bail in the form of cash or surety. Is there anything further?

MR. POLLAK: No, your Honor.

MR. KAUFMAN: No, your Honor.

THE COURT: All right. Thank you.

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